

Public Hearing
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER QUALITY
STATE OF CALIFORNIA

---o0o---

*Subject: Consideration of Water Quality Control
Plan for the San Francisco Bay/Sacramento-
San Joaquin Delta Estuary*

---o0o---

Held in
Resources Building
Sacramento, California

---o0o---

Thursday, February 23, 1995
9:10 a.m.

A L I C E B O O K
CERTIFIED SHORTHAND REPORTER
24122 MARBLE QUARRY ROAD
COLUMBIA, CALIFORNIA 95310

PHONES: 916 457-7326 & 209 532-2018

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

Board Members:

- JOHN CAFFREY, Chairman
- JAMES STUBCHAER, Vice Chairman
- MARC DEL PIERO
- MARY JANE FORSTER
- JOHN BROWN

Staff:

- WALTER PETTIT, Executive Director
- THOMAS R. HOWARD, Chief Engineer
- BARBARA LEIDIGH, Chief Counsel

---oOo---

	INDEX OF WITNESSES	
		Page
1		
2		
3	PATRICK COULSTON, Interagency Ecological Program	7
4	DAVID ANDERSON, Department of Water Resources	11
5	ROGER PATTERSON, Club Fed	16
6	GLEN BIRDZELL, City of Stockton	20
7	ALEX HILDEBRAND, South Delta Water Agency	24
8	JOHN HERRICK, South Delta Water Agency	27
9	JEANNE ZOLEZZI, Stockton East Water District	29
10	ED STEFFANI, Stockton East Water District	38
11	STEVE MACAULAY, General Manager, State Water	
12	Contractors	39
13	CHRIS HYASHI, Joint Water Users	40
14	San Francisco Public Utilities Commission	63
15	GREG GARTRELL, Contra Costa Water District	42/49
16	DAVE SCHUSTER, Joint Water Users	43/52
17	WALT WADLOW, Prinipal Engineer, Santa Clara	
18	Valley Water District	45
19	DAN NELSON, Executive Director, San Luis	
20	Delta-Mendota Water Authority	48
21	ALAN LILLY, Yuba County Water Agency	57
22	TOM ZUCKERMAN, Central Delta Water Agency	69
23	RICHARD GOLB, Northern California Water Agencies	76
24	PATRICK PORGANS	79
25	CRAIG WILLEY, San Joaquin County	89

1	WILLIAM R. JOHNSTON, San Joaquin River Tributary	
2	Agencies	94
3	JIM CHATIGNY, Manager, Nevada Irrigation District;	
4	Chairman, Delta Tributary Agencies	104
5	GARY BOBKER, Bay Institute of San Francisco	110
6	STEVE MCADAMS, Assistant Director, San Francisco	
7	Bay Commission	121
8	NAT BINGHAM, Habitat Director, PCFFA	125
9	JIM EASTON, Delta Wetlands	129
10	GREG THOMAS, President, National Heritage Institute	135
11	MARGARET JOHNSTON, Executive Director, San Francisco	
12	Estuary Institute	145
13	CHRISTOPHER FOSTER, Area 1, Westlands Water District	151
14	LOWELL LANDOWSKI, Bay Fishermen's Coalition	156
15	MIKE HEATON, General Counsel, Westlands Water	
16	District	159
17		

--o0o--

1 THURSDAY, FEBRUARY 23, 1995, 9:10 A.M.

2 --oOo--

3 MR. CAFFREY: Good morning and welcome to this
4 hearing of the State Water Resources Control Board on the
5 Bay-Delta Draft Water Quality Control Plan.

6 My name is John Caffrey, Chairman of the Board.

7 Let the record show that the full Board is present.
8 By way of introduction of the people in front of the hearing
9 room, starting to my far left at the dais is Board Executive
10 Director, Walter Pettit. And then, proceeding down from Mr.
11 Pettit, Board Member Marc Del Piero. And between Mr. Del
12 Piero and me is Mary Jane Forster.

13 By the way, congratulations as our Vice Chair elect
14 to resume term on March 15.

15 On my immediate right is the current Board Vice
16 Chair, James Stubchaer; and next to Mr. Stubchaer is Board
17 Member John Brown.

18 At our front table is our Senior Engineer, Tom Howard
19 from the Delta Unit; and also, Senior Counsel, Barbara
20 Leidigh; and of course, we have our Court Reporter, Alice
21 Book, with us this morning.

22 Good morning to all of you.

23 Before I read the opening statement into the record,
24 which is our usual procedure, I would like to acknowledge on
25 behalf of the Board that this is the first time that we have

1 met on the Delta process, the Delta plan, since the death of
2 our colleague, John Krautkraemer.

3 While the Board members and Board staff have had
4 opportunity as individuals to express condolences to John's
5 family, we wish to say as we open these proceedings, again,
6 that we will miss John, his commitment and contribution, and
7 we will remember him with great respect.

8 And now, the opening statement. The purpose of this
9 hearing is to give all interested parties an opportunity to
10 present relevant comments and recommendations to the Board
11 regarding the contents of the Draft Water Quality Control
12 Plan for the Bay-Delta Estuary and its proposed adoption.

13 This hearing is being held pursuant to the Notice of
14 Public Hearing on Consideration of the Water Quality Control
15 Plan for the Sacramento-San Joaquin Delta Estuary issued
16 January 3, 1995.

17 The Draft Water Quality Control Plan that is the
18 subject of this hearing is the result of an agreement among
19 the major parties interested in the waters of the Bay-Delta
20 Estuary. The agreement was reached after a series of
21 workshops conducted by this Board and extensive negotiations
22 among the parties.

23 Having given the parties two months to review the
24 draft plan, we are conducting a hearing today in which the
25 interested parties will have a further opportunity to

1 comment. The Board appreciates the important work the
2 parties have put into developing a plan for the Bay-Delta
3 Estuary. We encourage all the parties to continue working
4 together.

5 After this hearing, we may make revisions if they are
6 needed. We will then, again, provide copies of the draft to
7 the interested parties. After that, we will hold a Board
8 meeting to consider it for adoption.

9 If you intend to speak today, please fill out a blue
10 speaker card and give it to our staff at the front table.
11 They look like this and are available at the back of the
12 room.

13 Conduct of the hearing: Today's procedures are
14 described in the notice for today. Additional copies of the
15 notice are available from staff.

16 In this hearing, I will call each party who has
17 submitted a card requesting an opportunity to provide oral
18 comments and recommendations. There will be no sworn
19 testimony or cross-examination of the parties, but the Board
20 members and the staff may ask clarification questions.

21 Each party will have 20 minutes for an oral
22 presentation. A party may be represented by one or several
23 speakers. If any party needs additional time, the party's
24 representative may ask for additional time at the beginning
25 of the presentation. Please explain why the additional time

1 is necessary.

2 If we are not able to provide you with all the time
3 you think you need, we encourage you to submit your
4 presentation in writing.

5 In the interest of time, we ask that parties avoid
6 repeating details already presented by other parties
7 whenever possible, and simply indicate agreement.
8 Alternately, parties with the same interests are welcome and
9 encouraged to make joint presentations. We will also accept
10 and we encourage written comments.

11 You need to provide the Board and staff with 20
12 copies of any written comments and recommendations, and make
13 copies available to the other parties who are here today.

14 Written comments should be provided as soon as
15 possible and must be received by the Division of Water
16 Rights no later than four p.m. on March 10, 1995. So, you
17 have until March 10 to comment.

18 Any materials received by the Board will be made
19 available for inspection by interested persons.

20 Again, a Court Reporter is present and will prepare a
21 transcript. If you want a copy of the transcript, you must
22 make arrangements with the Court Reporter.

23 We have a number of cards today, and when we get to
24 the end of the statement, I will read them in the order that
25 we are going to take them. And with regard to that, we will

1 take cards as we always do in the Delta proceedings in the
2 following order:

3 Elected officials for the State, federal and local
4 governments first; then representatives of State, federal
5 and local agencies; then all parties in the order that your
6 speaker card was submitted to staff, unless you have special
7 time constraints which are noted on your speaker card. And
8 even then, that could be difficult depending on how many
9 folks we have that have special time constraints.

10 We will do the best we can up here.

11 We thank those parties who have participated in the
12 Board's proceedings and have helped the Board develop a plan
13 that will afford reliable and reasonable protection for the
14 estuary and all its beneficial uses.

15 That completes the statement.

16 Do any Board members have any statements they wish to
17 make at this point before we proceed? Anything from staff
18 or Mr. Pettit?

19 All right. Then, I will read off the cards that I
20 have and I believe there are at least 20 here, and this is
21 the order that we will attempt to follow:

22 Joint presentation from Club Fed; that is Roger
23 Patterson, Wayne White, Jim Lecky and Patrick
24 Wright.

1 And then, Patrick Coulston, David Anderson,
2 Glen Birdzell, Alex Hildebrand, John Herrick,
3 Jeanne Zolezzi, Steve Macaulay, Ed Steffani.

4 And this is a joint presentation; first is
5 Chris Hyashi, Dan Nelson, Greg Gartrell, Dave
6 Schuster from the Joint Water Users.

7 And then, Alan Lilly, Christiane Hyashi, Thomas
8 Zuckerman, Richard Golb.

9 And then, Mat Bingham, Patrick Porgans, Jim
10 Easton, William Johnston, Gregory Thomas, Gary
11 Bobker, Jim Chatigny and Margaret Johnston.

12 This is the order, and some people have asked for
13 some accommodations and we will do our best to accommodate
14 those individuals.

15 I was told earlier that perhaps some of the members
16 of Club Fed have not arrived yet for their joint
17 presentation. Is that true? Is somebody here from Club
18 Fed?

19 MR. WRIGHT: The other people are not here yet.

20 MR. CAFFREY: Would you like to be moved back one,
21 Patrick?

22 MR. WRIGHT: Yes.

23 MR. CAFFREY: Okay, we will then move to the second
24 card and that is Patrick Coulston from the Interagency
25 Ecological Program.

1 Is Mr. Coulston here?

2 Good morning, sir, and welcome.

3 MR. COULSTON: Good morning, Mr. Chairman and members
4 of the Board.

5 My name is Patrick Coulston. I am Supervising
6 Biologist for the California Department of Fish and Game,
7 Bay-Delta Division.

8 I am also the Program Manager of the Interagency
9 Ecological Program for the Sacramento-San Joaquin Estuary,
10 commonly known as the IEP.

11 The directors and coordinators of the IEP agencies
12 have asked me to come before the Board today to make you
13 aware of an effort now under way to support the Board's
14 current development of a water quality control plan for the
15 estuary, specifically the monitoring program portion of that
16 plan.

17 The IEP which was established in 1970 by a Memorandum
18 of Agreement is the collaboration of nine State and Federal
19 agencies, including the California Department of Fish and
20 Game, California Department of Water Resources, the State
21 Water Resources Control Board, the U. S. Bureau of
22 Reclamation, the U. S. Fish and Wildlife Service, the U. S.
23 Environmental Protection Agency, the U. S. Geological
24 Survey, and the U. S. Army Corps of Engineers.

1 In January, 1995, the National Marine Fisheries
2 Service accepted an invitation to join the program.

3 The principal goal of the IEP is to provide for the
4 collection and analysis of environmental data needed to
5 understand factors in the estuary controlling distribution
6 and abundance of fish and wildlife resources, thereby
7 allowing sound management and regulatory decision making.

8 Information gathered and disseminated by the IEP has
9 played a prominent role in decision making by the Board in
10 previous Bay-Delta decisions, including the development of
11 D-1485 and draft Decision 1630.

12 As you know, in mid-December, 1994, representatives
13 of the State and Federal agencies and urban, agricultural
14 and environmental interests signed an agreement establishing
15 for a three-year period mutually agreeable protective
16 measures for the estuary.

17 As I understand it, this agreement is largely the
18 basis for the December, 1994, Water Quality Control Plan.

19 Since late December, representatives of the IEP have
20 been working with policy level and technical level
21 representatives of water and environmental interests to
22 develop a mutually agreeable monitoring program to evaluate
23 the protective measures and provide information for revising
24 the measures in the future.

1 This joint monitoring program development process has
2 been divided into three separate but closely related
3 efforts.

4 First, the document specifying monitoring goals,
5 objectives and strategies is being prepared to guide IEP
6 monitoring programs development. This goal, objectives and
7 strategy document exists in draft form and our hope was to
8 provide you with this document today. However, the parties
9 have not quite reached the point of mutual agreement on the
10 content language. Our intent still is to submit a document
11 acceptable to all parties to the Board before the March 10,
12 1995, comment deadline.

13 I can provide copies of the present draft of this
14 document to parties interested in commenting on it, and I
15 can be reached at 209-948-7800 to accomplish that.

16 Secondly, an effort is under way identifying designs,
17 specific compliance monitoring and research elements or
18 studies that are based on mutually agreeable goals and
19 objectives contained in the document described before.

20 In addition, as part of this effort, a broad list of
21 general and specific research questions has been drafted and
22 the questions are now being prioritized by the parties
23 involved.

24 Our present intent is to provide the IEP technical
25 teams with these research questions and the goals and

1 objectives document to use in designing specific monitoring
2 study elements.

3 The recommendations of the IEP technical teams will
4 be reviewed by the IEP management and configured into a
5 long-term monitoring program.

6 The directors of the IEP have asked us to complete
7 this process by September 15 of this year.

8 The water and environmental interests have been
9 invited to participate in the technical teams so that the
10 teams' recommendations reflect the concerns of these
11 parties.

12 Finally, a specific proposal for monitoring to
13 support decision making by the Club Fed Ops group is being
14 prepared. We expect that most of the elements of this
15 program will be under way this spring. I should say that
16 the urban and agricultural water users have taken the lead
17 on preparing that Club Fed Ops group support document.

18 In conclusion, I would like to say that the IEP is
19 encouraged by the expanded collaborative monitoring program
20 development process and believes that it will lead to the
21 availability of better and more widely accepted
22 environmental information of the future management of the
23 estuary, and specifically, decision making by the Board.

24 Thank you.

25 MR. CAFFREY: Thank you very much, Mr. Coulston.

1 Are there questions by Board members?

2 Anything from staff?

3 Thank you, sir.

4 I am going to rely on the folks from Club Fed to give
5 me a hand signal of some form -- okay, I see you waving me
6 off, Mr. Wright. Let me know when your participants are
7 here and we will take you next when that occurs.

8 David Anderson, Department of Water Resources.

9 Good morning, Mr. Anderson.

10 MR. ANDERSON: Good morning, Mr. Caffrey, and thank
11 you.

12 I am David Anderson and I am representing the
13 Department of Water Resources.

14 Mr. Coulston spoke of what everyone knows about the
15 December 15 consensus.

16 Our comments will be brief.

17 The Department fully supports this consensus and in
18 that spirit we have been working cooperatively with the
19 consensus group to fine tune the December, 1994,
20 understandings and have worked productively, we believe,
21 with both Club Fed and the Club Fed Ops group to implement
22 the Principles of Agreement that was signed and executed on
23 December 15.

24 Specifically, we have shared our concerns and
25 comments on the Board's draft plan with these groups in

1 order that they may be assimilated into consensus comments
2 to the Board or into consensus-based revisions which the
3 Board has undertaken.

4 Therefore, the Department does not itself offer any
5 comments on the objectives in the plan, but supports those
6 modifications or adjustments as have been agreed to by the
7 consensus group.

8 A bit out of place here, but I believe that these
9 things will be talked about and explained to the Board by
10 the Club Fed folks, and as well, I believe, by the water
11 users, a group that you will be hearing from later.

12 I do have one comment that I want to make on
13 objectives. The Department was requested to give an update
14 on where we stand with respect to Suisun Marsh. The parties
15 to the consensus effort indicated that of the many complex
16 and important items addressed in the December 15 consensus,
17 one area in need of some clarification was the objectives
18 for the Suisun Marsh. And this clarification has been
19 arrived at, I think, almost to a final point, but I think
20 the parties to the consensus wish a final chance to review,
21 but I think it does represent a substantial agreement.

22 We discussed this through the offices of the Club Fed
23 Ops group and it was concurred in by the four public agency
24 signatories to the Suisun Marsh Preservation Agreement and a
25 suite of agreements for marsh protection.

1 And I have appended to my comments the essence of
2 this agreement as to where we stand now and it provides that
3 the objectives for S-97 and S-35, which are the far western
4 marsh, would not become effective until October 1, 1997.

5 I also note in passing it provides that the non-
6 deficiency objectives for these four stations for November
7 will be 16.5 EC. This comports with the standards in the
8 existing marsh preservation agreement, which I believe was
9 the intent of the Board in the draft plan.

10 As expressly noted, the purpose for suspending the
11 effective date of these stations is to provide sufficient
12 time to allow a Suisun Marsh ecological work group to
13 convene and discuss water quality objectives for these
14 latter two stations.

15 The work group, which was already discussed at some
16 length in the Board's draft plan on page 38, in our view,
17 should also include EPA and the National Marine Fisheries
18 Service, and I think it is time for a plenary review
19 discussion of the water quality and public interest issues
20 in the marsh and should have a broad-based group to
21 undertake that effort in the next couple of years.

22 The Department also supports the comments that Pat
23 Coulston just made of the Department of Fish and Game as
24 representative of the Interagency Ecological Program with
25 respect to the monitoring aspects of the Principles for

1 Agreement. That's an ongoing process and we are supporting
2 that process.

3 The Department also supports the views expressed in
4 the comments of the Joint Users Group on the institutional
5 and legal framework of the Board's planning process.
6 Without getting into these in any detail, these are views
7 which the Department has presented to the Board on numerous
8 occasions, and most recently at the workshop on September 1,
9 1994.

10 As I say, we are not going to repeat them here, but
11 we do hope that their support and rearticulation by the
12 larger universe represented by the Joint Users Group will be
13 persuasive to the Board.

14 The Department, finally, will be submitting comments
15 on the program of implementation portion of the planning
16 document and on the draft environmental report by March 10.

17 In general, we concur with the approach taken in the
18 program of implementation section of the draft plan, and we
19 think that it comports with the Court of Appeals' 1986
20 interpretation of the Porter-Cologne Act's broad indication
21 of responsibility for implementing water quality objectives.

22 This is a minor point -- we think that in this regard
23 there is a statement on page 1 that indicates that the water
24 rights decision will provide for full implementation of the
25 water quality objectives, given what the Board clearly

1 recognizes in the program implementation, that there are
2 things besides simply water rights, including waste
3 discharge controls and actions by other agencies, and we
4 think that while it is undoubtedly true that much of the
5 implementation will occur through water rights actions, that
6 will not necessarily be all of it, and I think that Chapter
7 4 in your draft plan expressly recognizes that.

8 Those are our comments.

9 If you have any questions, I will be pleased to
10 answer them.

11 MR. CAFFREY: Thank you very much.

12 Anything from Board members?

13 MR. DEL PIERO: Mr. Anderson, have you had occasion
14 to review the submittal from Stockton East Water District?

15 MR. ANDERSON: No, I have not.

16 MR. DEL PIERO: Probably be good to read it.

17 MR. ANDERSON: Certainly.

18 MR. CAFFREY: Anything else. Anything from staff?

19 Thank you very much, Mr. Anderson.

20 We will now hear from the Club Fed group, Roger
21 Patterson, Wayne White, Jim Lecky, Patrick Wright.

22 Good morning. Is Mr. Lecky not going to be here?

23 MR. PATTERSON: No, Mr. Lecky from Marine Fisheries
24 is not here and he wanted you to know that lack of his
25 presence in no way is an indication of lack of interest or

1 support of the Marine Fisheries Service. He had some kind
2 of a conflict.

3 MR. CAFFREY: It must have had something to do with
4 the fog.

5 MR. PATTERSON: Mr. Chairman, members of the Board,
6 Mr. Pettit, I am Roger Patterson and I will present the
7 comments this morning of Club Fed.

8 First of all, I appreciate your indulgence in the
9 schedule. I will leave it to you to ask Wayne why he was
10 late.

11 Let me start by introducing the two gentlemen with me
12 this morning. First of all you know Patrick Wright. He is
13 with the EPA Region 9, San Francisco; and Wayne White, who
14 is the State Supervisor for the Fish and Wildlife Service
15 here in Sacramento.

16 I have provided copies of our statement to be
17 available to you, so I will merely hit on those areas we
18 want to emphasize this morning.

19 On December 15, the federal departments and agencies
20 which constitute Club Fed were signatories, along with
21 agencies of the State of California, water users and
22 representatives of environmental organizations, of the
23 Principles for Agreement on Bay-Delta standards between the
24 State of California and the Federal Government.

1 The Draft Water Quality Control Plan the State Water
2 Resources Control Board has prepared is a reflection of the
3 standards contained in those principles.

4 The Bureau of Reclamation and the Department of Water
5 Resources have agreed to operate the Central Valley Project
6 and the State Water Project in conformance with the
7 principles for the next three years. This is the period in
8 which the State Board will be developing an implementation
9 program for the Water Quality Control Plan.

10 It is expected that this program will address all
11 water right holders in the Central Valley and determine
12 their responsibility to meet the plan. The Bureau would
13 like to make it clear that it may not be possible or prudent
14 to meet all the standards under all conditions, but we will
15 make our best effort to do so.

16 The Fish and Wildlife Service and the National Marine
17 Fisheries Service, who have responsibility under the federal
18 Endangered Species Act, have or will be modifying the
19 biological opinions for winter-run chinook salmon and Delta
20 smelt to reflect that the projects will be operating to
21 these standards.

22 The Club Fed agencies have been working with State
23 Board staff and other interested parties to reach agreement
24 upon interpretations of the standards in the draft plan and
25 the principles.

1 There are five principal areas that are actually
2 under discussion. These include the striped bass water
3 quality standard, the forecast for the San Joaquin flows,
4 the X2 starting gate, the export limits during the San
5 Joaquin River pulse flows, and the Suisun Marsh standards.

6 We will continue to work with the various agencies
7 and interested parties to reach agreement on these
8 particular issues. We believe that we are very close to
9 that agreement and either we or one of the Club Fed agencies
10 will formally notify the State Board of the outcome of these
11 discussions by March 10.

12 I understand that Greg Gartrell of the Contra Costa
13 Water District is going to provide a more detailed
14 discussion of these issues in his testimony.

15 The Club Fed agencies believe that the recommended
16 actions in the draft plan have a great deal of merit and
17 should be pursued. To the extent that the authorities under
18 which our agencies operate and our funding allows us to do
19 so, we will undertake such programs.

20 The Club Fed agencies will be working closely with
21 the State agencies and others to develop a monitoring
22 program to address the needs and requirements of the new
23 standards.

24 We believe the Interagency Ecological Program is the
25 appropriate vehicle to develop such a monitoring program and

1 that integrated monitoring should be the goal, one that will
2 meet not only the needs of the new standards, but also, aids
3 in the efforts involved with the Central Valley Project
4 Improvement Act implementation and the joint long-term State
5 and Federal Delta planning process.

6 In order to conform our operations to the new
7 standards, the Bureau and the Department of Water Resources
8 will be submitting shortly to the State Board a petition to
9 modify conditions in the Central Valley Project and the
10 State Water Project water rights that are inconsistent with
11 conditions imposed by D-1485.

12 In conclusion, the Club Fed agencies are firmly
13 committed to the principles that we signed on December 15.
14 We stand ready to assist the State Board in any way you
15 desire. We will be happy to answer any questions.

16 MR. CAFFREY: Thank you very much, Mr. Patterson.

17 Are there questions from -- I presume the other two
18 gentlemen, Mr. White and Mr. Wright, are here to answer
19 questions?

20 MR. PATTERSON: That is correct.

21 MR. CAFFREY: Any questions from Board members at
22 this time?

23 I would just say that this is a pretty good synopsis
24 of what we hear, perhaps by rumor because we are not in
25 meetings, as you know, as members of the Board, but do you

1 feel pretty much, Mr. Patterson, or any of the other
2 gentlemen, that, if I understand you correctly, that by
3 March 10th you will be submitting something in writing on
4 these five very important points, that you will either give
5 us some suggested word changes or give us some suggested
6 interpretations of the words already there?

7 MR. PATTERSON: I think that's the outcome that we
8 are looking for. As you know, we were working with everyone
9 that has an interest, and hopefully, we can submit some
10 consensus recommendations and conclusions on those.

11 People are working hard, all with the same objective,
12 so we believe that's possible.

13 MR. CAFFREY: Thank you very much.

14 Any questions from staff?

15 Thank you very much, gentlemen. We appreciate your
16 being here.

17 Our next speaker is Glen Birdzell representing the
18 City of Stockton.

19 Good morning, sir. Welcome.

20 MR. BIRDZELL: Good morning, Mr. Chairman and members
21 of the Board and Mr. Pettit.

22 I have submitted this morning a letter from the
23 Director of the Department of Municipal Utilities from the
24 City of Stockton containing comments dealing with the water
25 quality objectives on the San Joaquin River between Turner

1 Cut and the City of Stockton for DO of six milligrams per
2 liter, and for compliance schedules included in NPDES
3 permits.

4 The City of Stockton was issued an NPDES permit in
5 October of 1994, which immediately placed it in the position
6 of liability for possible violations of this DO objective.

7 The findings of that permit indicated the City of
8 Stockton would not be able to meet that water quality
9 objective during the life of the permit. Additionally, the
10 findings indicated that the City of Stockton was not the
11 only reason for this water quality objective not being
12 attainable.

13 The City provided testimony during the permit process
14 indicating that if the discharge of the City was removed
15 from the San Joaquin River, indeed, the attainability of the
16 six would still not be met. The City believes that the
17 requirements in this NPDES permit placed an unreasonable and
18 disproportionate burden on the City of Stockton and the
19 metropolitan area to comply with this water quality
20 objective.

21 We feel that the modifications that we are proposing
22 would accomplish three facts for the Board:

23 One, the Regional Board would be given the authority
24 to include compliance schedules in NPDES permits, and
25 indeed, the Executive Officer of the Central Valley Regional

1 Quality Control Board agreed that if you have the authority
2 to place compliance schedules in the permits, he would
3 gladly do so.

4 We also feel that this modification would aid
5 substantially in diminishing the need for the appeal that we
6 currently have before the Board of that NPDES permit, and
7 would aid substantially toward a settlement and make that
8 more likely.

9 Further, we feel if these modifications were made,
10 that there would be additional consistency brought to the
11 Board's water quality planning process.

12 If there are any questions, I would like to answer
13 them.

14 MR. CAFFREY: Thank you, sir.

15 Mr. Stubchaer has a question.

16 MR. STUBCHAER: Is your sole concern the DO in the
17 receiving waters from your treatment plant?

18 MR. BIRDZELL: There are issues around that bring
19 that into the problem.

20 MR. STUBCHAER: And if the DO in the receiving
21 waters without your discharge met the standards, would you
22 have a problem with your discharge?

23 MR. BIRDZELL: It is more complex. It's the DO
24 objective and the various constituents in our discharge that
25 bring us the problem. And we have done the modeling and

1 testing indicating that if we didn't discharge, this DO
2 wouldn't be reached. We are building facilities that will
3 bring this into compliance, but we are ten years down the
4 road from being able to comply, so a compliance schedule
5 would seem reasonable at this point.

6 It's not that we aren't addressing the problem
7 currently and being proactive in addressing it, it is just
8 that the Regional Board was not allowed to place a
9 compliance schedule in the permit. They chose possibly to
10 use other vehicles. However, those would raise the cost of
11 construction considerably.

12 MR. STUBCHAER: Okay. I was looking for a map here.
13 Would you just briefly tell me where your discharge point
14 is.

15 MR. BIRDZELL: Highway 4, San Joaquin River.

16 MR. STUBCHAER: Okay, thank you.

17 MR. CAFFREY: Other questions?

18 Mr. Brown.

19 MR. BROWN: Glen, are you still considering
20 reclamation and reuse?

21 MR. BIRDZELL: We definitely are. We are approxi-
22 mately 65 percent complete with a marketing evaluation of
23 possible uses for reclaimed water in the area of the City of
24 Stockton. In fact, last night we completed our first
25 focused meeting with the agricultural community.

1 MR. BROWN: Thank you.

2 MR. CAFFREY: Anything from staff? Thank you very
3 much, Mr. Birdzell. We have your submittal and we will take
4 a look at it. Thank you.

5 Alex Hildebrand representing the South Delta Water
6 Agency.

7 Good morning, welcome.

8 MR. HILDEBRAND: Good morning, Mr. Chairman and
9 members of the Board.

10 I wore a tie today to impress you more than I did
11 last week.

12 MR. CAFFREY: You are always impressive Mr.
13 Hildebrand.

14 MS. FORSTER: Very handsome.

15 MR. CAFFREY: She never tells us that.

16 MR. HILDEBRAND: I am here representing the South
17 Delta Water Agency, Delta Water Users Association and
18 Reclamation District 2075.

19 I will keep my remarks brief in part by referring to
20 later remarks that you are going to hear on behalf of
21 Stockton East by Jeanne Zolezzi, and perhaps the Central
22 Delta Water Agency by Tom Zuckerman. We are in substantial
23 agreement with what they will say.

24 We also may submit written testimony later on in the
25 light of today's reactions.

1 As you know from previous discussions, we are very
2 much concerned about the potential consequences of
3 establishing fish flows for three and a half months of the
4 year without requiring any flows for the rest of the year.
5 This has the potential then for degrading the flows and the
6 water quality in those other months of the year, and that
7 then could have a substantial impact on prior rights and on
8 the resident fishery as well.

9 The analysis in the plan and in the environmental
10 planning that goes with it presume that there will be a
11 coordination of the release of westside drainage into the
12 river via Salt Slough, but you declined last week to require
13 the Regional Board to do that.

14 Consequently, there seems to be a dichotomy there
15 between what you are saying in this control plan and what
16 you did last week relative to the Regional Board. That
17 concerns us.

18 You have heard a lot about this so-called consensus
19 agreement, but I remind you that neither the people I
20 represent nor any of the districts on the east side of the
21 valley all the way from the Friant water users to the South
22 San Joaquin Irrigation District are not parties to that
23 agreement. They were not consulted at all, and
24 furthermore, there was no impact analysis of what would
25 happen to their communities, the urban users, the

1 agricultural users and so forth along those tributaries and
2 the main stem of the river if the agreement was carried
3 out.

4 This seems to be a rather major gap in the analysis
5 supporting the control plan and the Environmental Impact
6 Report for your current designation.

7 Mr. Herrick can address in greater detail than I can
8 exactly what is missing there to support what you are
9 proposing.

10 Now we understand that you aren't going to implement
11 the Vernalis fish flows for three years until you have your
12 water rights proceedings and decide how it will affect the
13 water rights of the various parties, but the Bureau is
14 committed and order, or condoned or something by this Board
15 to go ahead and provide those flows in the interim.

16 We don't see how you can permit them to do that
17 without some oversight from you as to how they impact these
18 other interests in the process of meeting this commitment
19 they have made.

20 We suggest that you could at least partly get around
21 this problem if you added one more footnote to the flow
22 requirement on page 17 where it refers to the Vernalis
23 flows. If you then related that to an additional footnote
24 which said: Water released to provide these flows shall
25 not result in subsequent violation of the Vernalis water

1 quality objective and shall not adversely affect the
2 ability to maintain downstream prior rights, and we could
3 add the public trust right in the other months of the year
4 to that.

5 We earnestly urge you to add such a footnote to
6 provide some limit on the manner in which the Bureau will
7 meet its three-year commitment.

8 So that's all I have to say unless you have some
9 questions.

10 Mr. Howard has this wording I just read to you.

11 MR. DEL PIERO: I was just going to ask if you
12 submitted that.

13 MR. HILDEBRAND: I have some additional copies if you
14 want them.

15 MR. CAFFREY: Are there questions of Mr. Hildebrand?
16 Anything from staff at this time?

17 All right, thank you very much, Alex. Good to see
18 you.

19 Next is John Herrick representing the South Delta
20 Water Agency as well.

21 Good morning, sir. Welcome.

22 MR. HERRICK: Good morning.

23 My name is John Herrick and I am representing the
24 South Delta Water Agency.

25 I won't take too much of your time.

1 As Alex said, we join with Stockton's proposed
2 comments and South Delta.

3 Just real quickly, in our opinion, the plan and the
4 EIR are deficient in two aspects: The first is that the
5 EIR does not evaluate or examine the effects of meeting the
6 required flows during the interim period over a multiyear
7 period.

8 Based on our review of those documents, we have
9 concluded that meeting the required flows in any one year
10 will most likely mean that the water quality flows will not
11 be met in that year, and indeed, may result in there being
12 insufficient carryover in the reservoirs to meet the
13 following year's flow requirements.

14 Hence, we believe the environmental report does not
15 examine the contingency that two of the goals, of the goals
16 of the plan, flows and the water quality, cannot be met at
17 the same time.

18 Failure to meet either of these goals will
19 significantly affect not only fish populations, but also,
20 the in-channel habitats, the riparian rights holders, and
21 all sorts of other interests.

22 We see no examination in this report of the mechanics
23 of meeting these flows and those effects, and how they
24 affect all the parties.

1 The second way that it is deficient is dealt with
2 more by the Stockton East submittal, and we believe that
3 the plan is insufficient in that it doesn't examine how the
4 flows are to be met prior to the implementation of the
5 plan, this interim period.

6 This is relevant in that the agreement in the plan
7 commits the feds to meeting these flows in the three-year
8 interim or until the water rights issues are resolved. And
9 in order to meet those flows, the manner in which they do
10 it will necessarily affect all the various water right
11 holders in the system.

12 We don't believe the Board can avoid addressing this
13 interim period just by saying the feds are going to be
14 dealing with that because of the effect on all water right
15 holders.

16 Again, this point is more closely examined by
17 Stockton East in their information.

18 That's all I have. Thank you.

19 MR. CAFFREY: All right, thank you, Mr. Herrick.

20 Are there questions? Anything from staff?

21 MR. HOWARD: No.

22 MR. CAFFREY: Thank you, sir.

23 Jeanne Zolezzi from the Stockton East Water District.

24 Good morning and welcome.

25 MS. ZOLEZZI: Good morning.

1 My name is Jeanne Zolezzi and I am representing the
2 Stockton East Water District.

3 I have heard much this morning about the much
4 heralded framework agreement. Fortunately, however, you
5 have also heard from Mr. Hildebrand and Mr. Herrick so that
6 you know that not all parties were at that table when this
7 consensus was reached. In fact, for many of the districts
8 who were not at the table, what we have discovered in
9 reading the framework agreement and in reading the Draft
10 Water Quality Control Plan is that consensus was reached by
11 compromising our water rights.

12 We have two major points that I would like to make
13 today regarding the draft plan. I would also like to put
14 on the record that we will be submitting our comments on
15 the draft environmental document in writing later. The
16 first point is on the San Joaquin River flows and the draft
17 plan indicates that within three years this Board will
18 allocate responsibility for those flows in a water rights
19 phase.

20 As Mr. Hildebrand and Mr. Herrick mentioned, our
21 concern, however, is with the sentence in the draft plan
22 that the U. S. Bureau of Reclamation shall provide these
23 flows in accordance with the biological opinion for Delta
24 smelt during this three-year period. This sentence must be
25 removed from the draft plan.

1 As you well know, this is a water quality plan. It
2 is not a water rights allocation. Therefore, a statement
3 such as this which actually assigns the obligation to meet
4 the flow standards even on an interim basis is
5 inappropriate in the water quality document.

6 It is true that the United States purports to provide
7 these flows in the framework agreement. We are aware of
8 that. We do not believe they have the authority to do that
9 and that representation by the United States will be
10 challenged.

11 What we would recommend is this Board not get
12 involved in that dispute and not purport to include water
13 rights allocations in the Draft Water Quality Control Plan.
14 There are many reasons why we object to the United States
15 agreeing to provide those flows.

16 It is our understanding that the U. S. purports to
17 provide those flows from the New Melones project and the
18 Stanislaus River. There are numerous reasons why the
19 United States does not have the authority to do that. We
20 believe it is important that I cover those briefly so this
21 Board understands why it is inappropriate for this
22 particular sentence to be included in the draft plan.

23 The first is the stated place of use in the permits
24 granted to the United States for the New Melones project do
25 not include the purported places that this water will be

1 used in the draft plan, which includes the Suisun Bay and
2 the Western Delta. That is not a place of use for New
3 Melones water.

4 The Bureau has not attempted to get that place of use
5 changed since it filed a consolidated place of use many
6 years ago and has not pursued it since.

7 The second issue is that the water rights for New
8 Melones specifically state that before any change in the
9 project determined by the State Board to be substantial,
10 permittee shall submit such change to the Board for its
11 approval. The United States has not done so, despite the
12 fact that using New Melones water to meet these flow
13 requirements would take more than the safe yield of the
14 project as is indicated even in your draft EIR.

15 Next, the framework agreement and the draft plan
16 state that the United States will provide the required
17 flows in accordance with the biological opinion for Delta
18 smelt. Again, this is somewhat confusing. The flow
19 requirements in the draft plan greatly exceed the flow
20 requirements from the San Joaquin River for Delta smelt as
21 set forth in the Delta smelt biological opinion that is in
22 existence now.

23 So, the statement itself is misleading. Is the
24 United States going to provide the flows up to the

1 requirements of the Delta smelt opinion or in excess of
2 that opinion in those requirements.

3 Next, the dedication of the flows of New Melones to
4 meet the requirements for Delta smelt is inconsistent with
5 the language in the Delta smelt opinion itself. In that
6 biological opinion, the Bureau is pointed toward different
7 sources of water to meet the San Joaquin flows including
8 temporary water supplies and Friant Class 2 water.

9 There are also other sources of CVP water that are
10 available to provide flows in the San Joaquin.

11 It is our understanding from conversations with the
12 Bureau that they have failed to look at any other option
13 but New Melones, and they should be forced to do so.

14 Finally, dedication of flows from New Melones to meet
15 the requirements of Delta smelt and the San Joaquin River
16 flows violates the Central Valley Project contracts on the
17 New Melones project.

18 And as you all know, this and other items are the
19 subject of litigation and will be determined in that venue.

20 But for all these reasons, again, we believe that
21 this Board should not include any statement in the draft
22 plan regarding the Bureau's stated intention to meet flows
23 for the water quality objectives even in the interim
24 period.

1 The second point that we would like to make is on the
2 Southern Delta agricultural salinity objectives and we
3 obviously had a long discussion on this last week. But
4 again, our points are very similar to that which we made
5 last week.

6 The plan states that implementation of the objectives
7 will be accomplished through the release of adequate flows
8 to the San Joaquin River and control of saline agricultural
9 drainage to the San Joaquin River and its tributaries.
10 Despite this statement, we again have no idea how this
11 Board intends to implement that statement.

12 As you know, this Board failed to require the
13 Regional Board just last week to adopt a water quality plan
14 for the San Joaquin River which addressed salinity
15 objectives in the lower San Joaquin River.

16 What we find most injurious is that the major focus
17 in this draft plan in addressing the problem of salinity in
18 the San Joaquin River is under the heading of the
19 *Recommendations to Other Agencies*. The plan goes on and on
20 about what other agencies should do to address this
21 problem.

22 The point we would like to make is that no other
23 agency has as much direct authority over discharges of
24 saline water into the San Joaquin River as this Board and

1 the Regional Water Quality Control Board that is directly
2 under this Board's authority.

3 The draft plan states that control and limited
4 discharges of agricultural drainage water to the San
5 Joaquin River must occur in a manner that meets water
6 quality objectives, and the draft plan suggests that waste
7 discharge requirements may be an appropriate tool to use.

8 Again, we find that statement curious because just
9 last week this Board failed to require the Regional Board,
10 Central Valley Regional Board, to implement the tools to
11 use waste discharge requirements to control this problem.
12 They have no salinity objectives in the San Joaquin River
13 in their basin plan and they cannot utilize waste discharge
14 requirements which are suggested in the draft plan to
15 control that problem.

16 If this Board does not take a leadership role in
17 controlling the problem of salinity in the Southern Delta,
18 we think that its direction to other agencies and boards to
19 take such action really rings false. We cannot expect
20 other agencies with less authority over that issue to take
21 action when this Board and the Regional Board under it have
22 failed to begin that process.

23 And, in closing, the draft plan purports to achieve
24 water quality objectives by also achieving certainty to
25 water users in California. With regard to the New Melones

1 project, the only certainty that we have realized is that
2 there will be no water available for the contractors on the
3 New Melones project either in the interim three-year period
4 or unless something is done in the long term for the
5 implementation of this plan.

6 We would hope that the language about the Bureau
7 providing those flows in the next three years could be
8 taken out, and obviously, we could fight this battle during
9 the water rights phase where it is appropriate to do so,
10 and again, we would urge this Board to take action
11 regarding the salinity problem in addition to addressing
12 that problem to other agencies and boards.

13 Are there any questions?

14 MR. CAFFREY: Thank you.

15 First, Ms. Forster, and then Mr. Brown.

16 MS. FORSTER: All I wanted to say for the record is
17 in adopting the basin plan last week, the Board had strong
18 recommendations that we would address this problem and we
19 are in the process of writing a formal letter to the
20 Regional Board making that a priority.

21 So, I think that should be clarified, that we are
22 very concerned and we are trying to take appropriate action
23 with the Regional Board to look at these issues.

24 MR. CAFFREY: Mr. Brown.

1 MR. BROWN: Jeanne, you made a statement that the
2 water quality requirements would take the entire safe yield
3 of New Melones. Does that include the Tri-Dam project
4 which New Melones also regulates, the 300,000 for Oakdale
5 Irrigation District?

6 MS. ZOLEZZI: It is difficult to say at this point.
7 You don't have actual numbers. There are figures in the
8 draft environmental plan.

9 What we do know is that the projected flows for the
10 San Joaquin River could not be met from the safe yield of
11 the New Melones project without those flows that the Bureau
12 has reserved for Oakdale and South San Joaquin Irrigation
13 District. Whether or not the Bureau would attempt to go
14 beyond the safe yield of Melones and dip into those prior
15 rights, I have no information.

16 We do know that the yield of New Melones project
17 without that is insufficient to meet these flow
18 requirements.

19 MR. BROWN: Okay, so that's what you were speaking
20 of, was the yield without the Tri-Dam project?

21 MS. ZOLEZZI: It is insufficient, yes.

22 MR. BROWN: Thank you.

23 MR. CAFFREY: Any other questions?

24 Anything from staff?

1 Thank you very much, Ms. Zolezzi. We appreciate your
2 comments.

3 I am going to take one speaker out of order who has a
4 time constraint, Ed Steffani, also from the Stockton East
5 Water District, so perhaps that is appropriate at this
6 point anyway.

7 MR. STEFFANI: I was sort of counting on Alex not
8 wearing a tie.

9 MR. CAFFREY: Do you want to take a couple minutes to
10 borrow his?

11 Good morning, sir, welcome.

12 MR. STEFFANI: Good morning, Chairman Caffrey and
13 Board members.

14 My name is Ed Steffani, General Manager of Stockton
15 East Water District.

16 I will be very short because Alex and Jeanne have
17 both covered the consensus thing. There was no consensus.

18 The second point, we might be able to solve a lot of
19 the San Joaquin River quality problems by adding another
20 measuring point in addition to Vernalis. If we had a
21 quality and flow station further upstream near the Merced,
22 that might go a long way toward solving the problem.

23 Finally, let's not spend the next three years trying
24 to find an equitable way to dilute the pollution coming

1 down the San Joaquin River. Let's spend that time instead
2 to find a way to eliminate the pollution.

3 Thank you.

4 MR. CAFFREY: Thank you, Mr. Steffani.

5 Are there questions?

6 Thank you, sir.

7 We will go back to the regular order now, Steve
8 Macaulay, General Manager of the State Water Contractors.

9 Good morning, welcome.

10 MR. MACAULAY: Good morning, Mr. Chairman and Board
11 members.

12 Mine is a me-too statement. Many of our members were
13 actively involved in the development of the standards
14 embodied in the Principles for Agreement on December 15,
15 1994. Our Board of Directors certainly has supported that
16 effort all along. Our Board of Directors is in full
17 support of the comments you will hear today from the joint
18 California water users.

19 MR. CAFFREY: Thank you, Mr. Macaulay.

20 Any questions?

21 All right, thank you, sir.

22 We will now have a joint presentation from the Joint
23 Water Users, Chris Hyashi, Dan Nelson, Greg Gartrell, Dave
24 Schuster and Walt Wadlow.

25 Are these gentlemen here? They are. Welcome.

1 MS. HYASHI: Good morning, Mr. Chairman and Board
2 members.

3 I am here in the shoes of Mr. Moran in his capacity
4 as the Chairman of the Board of Representatives of the
5 California Urban Water Agency, who was unfortunately unable
6 to be here to present comments today.

7 These comments were compiled by the Joint California
8 Water Users, which is a coalition of urban and agricultural
9 interests from north and south serving more than two-thirds
10 of the State's urban population and substantial portions of
11 the irrigated farm land.

12 These comments to the Draft Water Quality Control
13 Plan and Draft Environmental Report represent a
14 continuation of the joint efforts of last year which
15 culminated in the historic consensus between urban,
16 agricultural, environmental and regulatory communities
17 which were embodied in the December 15, 1994, Principles
18 for Agreement.

19 In addition to my own comments today, the joint
20 agencies will also be represented here today by Mr. Dan
21 Nelson, who will discuss the ongoing effort of the
22 operations group; Mr. Dave Schuster, who will discuss water
23 transfers; Mr. Greg Gartrell, who will discuss monitoring
24 efforts; and Mr. Wadlow, who will discuss Category 3
25 issues.

1 The joint agencies wish to commend the State Board
2 and its staff on the tremendous amount of effort that has
3 gone into the Draft Water Quality Control and the Draft
4 Environmental Impact Report. The plan provides essential
5 technical clarification to the relevant aspects of the
6 Principles for Agreement and the Draft Environmental
7 Impact Report is generally thorough for the purpose of
8 compliance with the California Environmental Quality Act.

9 The joint agencies strongly encourage the Board to
10 move forward with adoption and implementation of the plan
11 and to that end we have combined our technical and legal
12 resources to review and provide detailed comments to the
13 plan and the Draft Environmental Impact Report.

14 These issues have all been thoroughly discussed with
15 the Board's technical and legal staff, and these
16 discussions have been very constructive and productive, and
17 the written comments submitted to the Board yesterday are
18 intended as clarification of these discussions, and by the
19 way, our copies for the public of these comments were
20 exhausted early this morning but more will be provided
21 outside the door here at some point during the morning, if
22 anyone wants additional copies.

23 I will spare the Board from a detailed verbal
24 presentation of the issues that are contained in the

1 comments, but representatives of the joint agencies are
2 available to take any questions today.

3 The joint agencies are continuing to move forward as
4 a coalition to maintain consensus in this process into the
5 implementation phase, and with that, I would like to turn
6 the discussion over to Mr. Gregory Gartrell.

7 MR. GARTRELL: Thank you.

8 Mr. Chairman and members of the Board, I am Greg
9 Gartrell from Contra Costa Water District, and I am with
10 the CUWA and Ag group. The CUWA-Ag group has been actively
11 working on development of the monitoring plan to meet the
12 requirements of the Principles of Agreement and be
13 consistent with the Draft Water Quality Control Plan.

14 In this process, the CUWA-Ag group has been
15 collaborating with State and Federal agencies and other
16 interested parties. While we are not prepared to make a
17 recommendation to the Board today, we hope to have one by
18 March 10.

19 The monitoring effort covers several areas of
20 importance; first, compliance monitoring to assure that the
21 standards are being met. This is currently being carried
22 out and no significant changes are envisioned for this
23 portion of the program.

24 Second, a real-time monitoring program must be
25 developed to assist in the key decisions that will need to

1 be made by the operations group with respect to modified
2 operations of the project under the Principles of
3 Agreement.

4 There's an intensive effort under way to develop a
5 plan that can be implemented this year and that will
6 integrate with the longer-term needs.

7 Third, we are working on a long-term program designed
8 to measure the effectiveness of the standards. This
9 program will provide necessary information for the
10 triennial review and will be used in developing the long-
11 term solutions for the Delta.

12 Some of the elements of the long-term program may be
13 refinements to existing studies and monitoring programs.
14 The existing programs with some refinements are, of course,
15 being continued this year, so we will not lose valuable
16 data in 1995.

17 In order to make our total monitoring program
18 responsive and cost effective, it is envisioned that peer
19 review and coordination with other programs will be made
20 integral parts.

21 We expect to make recommendations to the Board as to
22 how the program should be structured by March 10.

23 Next is Dave Schuster on water transfers.

24 MR. SCHUSTER: What we are doing here, as was stated,
25 we are going to continue our efforts to have people in the

1 implementation of this process, direct discussions with
2 others on the monitoring, and what I am going to talk about
3 now is transfers and what we will talk about as far as
4 Category 3. This is intended to give you sort of an update
5 of where we collectively are.

6 As far as transfers, I can be very brief. As you
7 know, the December 15 agreement did not deal directly with
8 the transfers since your plan does not either.

9 Since we are operating to the December agreement, it
10 does affect our ability to transfer in terms of how much
11 pumping capacity is available and so on, and, of course,
12 your plan when implemented would do the same.

13 What we have done is form a water transfer committee,
14 the CUWA-Ag people have, and invited others to come, which
15 they have. Your Board, your staff has participated and
16 been very helpful in that process.

17 We have just got started. We are basically trying to
18 do two things; identify the amount of water under certain
19 water year type conditions by month that can be transferred
20 within the constraints of the December 15 agreement and
21 your plan, better understand what we did to ourselves in a
22 sense.

23 I think so far it looks like we are better off than
24 before the plan in terms of transfers. What has to happen
25 gets fairly mind boggling in a regulation sense -- what has

1 to go to the Board, what doesn't have to go to the Board,
2 trying to think through the process of implementation of a
3 particular transfer and looking at what happens if somebody
4 wants to try to propose a transfer that would be beyond the
5 agreement or cause noncompliance, which would have to be
6 handled by the Board; in other words, on a case-by-case
7 basis.

8 We are not advocating that, so we are trying to think
9 through those three different areas. That's pretty much
10 where we are. We have made progress.

11 The last meeting went three or four hours and most of
12 it was trying to work together to figure out what the
13 problem is, and it gets very confusing in terms of what's
14 the Board's authority and technically what you can do and
15 what you can't do, so we are sort of in that stage.

16 MR. CAFFREY: Thank you, Mr. Schuster.

17 Mr. Wadlow.

18 MR. WADLOW: Thank you.

19 My name is Walt Wadlow. I am Principal Engineer with
20 the Santa Clara Valley Water District.

21 Mr. Chairman and members of the Board, what I would
22 like to do this morning is very briefly update you on the
23 progress that has been made relative to Category 3
24 implementation.

1 As you probably recall, Category 3 is the terminology
2 that was used in the December 15 principles statement to
3 refer to non-outflow factors.

4 I wanted to use the graphic that is up there now, the
5 single graph. It is a very busy one but I will attempt to
6 walk you very quickly through the flow of events from the
7 December 15 principles.

8 As you probably recall, those principles assign to
9 the Joint Water Users the responsibility for conducting an
10 open and collaborative process which would lead to the
11 development of an implementation plan for Category 3
12 measures.

13 The principles also articulate an initial financial
14 commitment with regard to Category 3. In response to that
15 commitment in the principles, the Joint Water Users
16 established a Category 3 ad hoc work group which is a 14-
17 member work group. It has representatives from the water
18 users, the environmental community, the Club Fed fishing
19 interests as well. That group has met four times to date.
20 Those are open meetings. It's intended to be that open and
21 collaborative process called for in the principles.

22 There are two main functional areas that that work
23 group has had work done for them in. The first is in the
24 institutional side of Category 3, and that is looking at
25 alternatives for setting up an institution to collect, hold

1 and disburse funds associated with funding of Category 3
2 measures.

3 The second main foundational area is to actually look
4 at the measures themselves.

5 To date, through interviews of over 70 people and a
6 solicitation of projects, we have received somewhat in
7 excess of 500 suggested projects for Category 3. Those
8 projects are at this point being assembled into a database
9 which will be made available to the interested community at
10 large and used as the basis for developing potential
11 Category 3 measures for implementation.

12 The intent of both of those task groups is to be open
13 to all interested parties. Essentially when I or someone
14 receives a phone call, we simply add that individual that is
15 interested to the appropriate area.

16 Our intent is to develop an implementation plan
17 document by the time the State Board goes final with your
18 plan. We understand the target date for that now is March
19 31, 1995.

20 Our comments to you; that is, the Joint Water Users'
21 comments indicate that we will work with the State Board
22 staff on the linkage between the Category 3 efforts that we
23 have under way and the way that Category 3 is discussed in
24 the water quality control plan, and we have also asked that
25 language be included in the plan which recognizes that this

1 effort will be continuing beyond the March 10 deadline for
2 comments.

3 MR. CAFFREY: Thank you, sir.

4 MR. NELSON: My name is Dan Nelson. I am the
5 Executive Director of the San Luis and Delta-Mendota Water
6 Authority.

7 By way of summary and conclusion, I would like to
8 echo Chris's compliments to the State Board on their efforts
9 in preparing and developing the draft plan, and also, I
10 would like to take this opportunity to thank the State Board
11 for creating an atmosphere that allows the water users to
12 get together which led to the December 15 agreement
13 ultimately.

14 As you know, the stakeholders were very much engaged
15 and the joint agencies were very much engaged in the
16 development of the December 15 agreement, and as you have
17 heard today, we remain committed to continue our activities
18 to assist the State Board and California and fed agencies to
19 implement the December 15 agreement.

20 I would like to summarize what you have just heard
21 today. Our focus is going to be post-December 15 agreement
22 and it is on the issues that we have just talked about, and
23 that's again the development of Category 3 issues, the
24 development of the monitoring program, participation in the
25 operations group, trying to scope out how we do transfers in

1 the context of the Bay-Delta agreement, and also, we have
2 begun working with representatives of the upstream water
3 groups to see if we can put together some consensus effort
4 to deal with the water rights phase, Phase 2, and I, though I
5 heard on your list that Rich Golb would be testifying a
6 little later, and I will defer to him to go into more detail
7 on that.

8 I think it is noteworthy to also say that we have had
9 tremendous cooperation post-December 15 from Federal and
10 State agencies, your staff, incorporating the stakeholders
11 through the implementation and decision-making process, and
12 we are very encouraged by that, and commit to you that we
13 will continue working with the appropriate agencies.

14 MR. CAFFREY: Thank you very much, Mr. Nelson.

15 MR. NELSON: Roger Patterson also said that Greg
16 Gartrell would touch on the five remaining issues, and Greg
17 is available to do that.

18 MR. GARTRELL: Thank you.

19 Roger mentioned the five issues and I would like to
20 go through them briefly to give you an understanding of what
21 they are and where we are at.

22 The first involves the San Joaquin River forecast for
23 determining the minimum flows at Vernalis. The draft plan
24 used a 75 percent exceedence level. This was not specified
25 in the Principles of Agreement and in examining the data,

1 there was some concern that the data that have been
2 available in the past were in need of update and there
3 hadn't been a thorough analysis, and there still isn't.

4 This has been discussed with a number of parties and
5 was discussed in the Cal-Fed operations group last week.
6 The consensus there was that the biological opinions use a
7 90 percent forecast, that the water quality control plan
8 retain the 75 percent level with the understanding that that
9 level would have to be examined in the water rights
10 proceedings and in the triennial review when we have a
11 better data set available and have better information on
12 what the effects of that forecast would be.

13 The second involves the alternative compliance for
14 the X2 standard. This is touched on in the Principles of
15 Agreement, that the concept of the X2, the two parts
16 salinity, actually be attained at the confluence at the
17 beginning of February. The Principles of Agreement call for
18 resolution of this consistent with the water requirements in
19 the agreement, essentially that there be no net water cost
20 for that.

21 A proposal that might meet those requirements is
22 under discussion and appears near resolution. We expect to
23 have a final recommendation on that prior to March 10.

24 A third one is the lower San Joaquin River salinity
25 standard, or the striped bass spawning standard. The Joint

1 Water Users proposal cited in the Principles of Agreement
2 was the 1991 Water Quality Control Plan which sets salinity
3 levels at Antioch and Prisoners Point. The Draft Water
4 Quality Control Plan proposed a Jersey Point to Prisoners
5 Point standard.

6 This, again, was discussed in the Cal Fed operations
7 group and the consensus there was the standards be set in
8 April-May at .44 millisiemens per centimeter level from
9 Jersey Point to Prisoners Point for wet, above normal, below
10 normal and dry years; that the standard not apply in
11 critical years, protection being provided by the X2
12 standards. And, again, I think there was good consensus on
13 that one.

14 The fourth one is the Suisun Marsh salinity that Dave
15 Anderson discussed a little earlier and I think that that is
16 nearing resolution.

17 And the final one involves the export levels during
18 the San Joaquin pulse flow. The Principles of Agreement and
19 the draft plan call for export no more than the inflow at
20 Vernalis. The question that arose was over the purchase of
21 water for flow augmentation and the levels of flow that
22 might be desired relative to the export levels.

23 The Draft Water Quality Control Plan allows the
24 export levels to go below the level of Vernalis flow in the
25 provisions of the Principles of Agreement, and consequently,

1 in this one I think that the issue is not one that requires
2 a change in the plan, but can be addressed in the operations
3 group or in the biological opinions.

4 MR. SCHUSTER: Just for the Board's information, you
5 probably know this, but what Greg just went through is very
6 accurate and correct, of course. I just want to give you a
7 sense in terms of the process. As Greg said, we decided to
8 use the Ops group and what Greg has done is to form a task
9 for that group, bringing people together, and that is why
10 Roger Patterson referred to Greg.

11 Your people are heavily involved in it, Tom Howard is
12 heavily involved. So it is a cooperative effort and is not
13 one that we are doing alone. It is one in which we just
14 helped.

15 MR. CAFFREY: We appreciate your willingness to
16 involve all the parties. We think you are continuing this
17 effort of consensus and it is certainly something that the
18 Board has been supporting, and we are still supportive of
19 that concept and hope you continue along this path.

20 So, I thank you all for your presentation.

21 Are there any questions from Board members?

22 MR. BROWN: You have participated excellently in
23 helping to identify the water quality requirements and
24 relative demand, and I see in your task group here, your

1 potential Category 3, that includes things such as water
2 transfers.

3 Does it also include other options that are being
4 considered in the CVPIA right now, the charge that the
5 Secretary of Interior has to restore those quantities of
6 water back to the CVPIA through various options of
7 conservation, reclamation and reuse?

8 Are you involved in that at this time or will that
9 come later?

10 MR. WADLOW: One of the things that we recognized
11 early on was the close linkage between Category 3 and not
12 only the CVPIA restoration specifically, but the San
13 Francisco estuary project as well, because all of those
14 address projects that fall within that same arena.

15 To date the coordination there has been attempted
16 essentially through communication and dissemination of the
17 same types of ideas and projects that we are considering.

18 It has been suggested that at some future time, there
19 should be more careful consideration to actually linking
20 those more closely in terms of the decision-making process,
21 and the object of that, of course, would be to make sure
22 that the funds that are spent are spent in the most
23 effective manner, and that you don't create a situation
24 where you have an overlap trying to address essentially the

1 same types of elements since they all fall in the Category 3
2 realm.

3 MR. BROWN: The early fear this Board had and some
4 staff members had was that those options would be considered
5 at some later date and they would trail to the point to
6 where they could not be as supportive to help resolve the
7 issue, as if they were brought along on a parallel track.

8 In discussions the other day with some people that
9 are working on these considerations at Jones & Stokes, I
10 understand they have advanced that track, so to speak, to
11 where it will be considered early in the CVPIA, and it may
12 be that the information developed through that analysis will
13 be helpful in your endeavors, plus the CVPIA, of course, is
14 limited to the CVP study area. And many of those options go
15 way beyond just that study area itself, throughout the
16 state, in fact.

17 So, I encourage you to broaden your horizons to
18 include those options, too, beyond the CVPIA.

19 MR. WADLOW: We would certainly welcome additions in
20 any of those areas where they bear on anything clearly
21 germane to Category 3.

22 MR. BROWN: Good.

23 MR. CAFFREY: Anything else?

24 Mr. Del Piero.

1 MR. DEL PIERO: Who is representing the fishery
2 industry group? You indicated there was someone repre-
3 senting them.

4 MR. WADLOW: Specific individuals, Jim Crenshaw and
5 Nat Bingham are both participating in that particular work
6 group to bring both the sportfishermen to the table as well
7 as the commercial fishing industry.

8 MR. DEL PIERO: Thanks. Who is preparing the budget
9 selection criteria? What standards are being used for the
10 preparation of those criteria?

11 MR. WADLOW: What we attempted to do is really to do
12 a two-step process in terms of putting together that
13 selection of criteria.

14 The first was to look out there at a lot of existing
15 work that has already been done to the BDOC process and
16 other processes in terms of identifying good selection
17 criteria for looking at Category 3 measures.

18 The other effort that we have had under way is to try
19 and work both with the work group, and additionally, with
20 one of the task groups and other interested parties who have
21 come to us and said, we would like to participate in the
22 development of the criteria that could be used for the
23 selection of the project.

24 We are at the stage now where we have our first cut,
25 if you will, at a set of criteria that could be used to

1 evaluate projects looking both at biological benefits,
2 feasibility in terms of implementation, support for the
3 projects, ability to finance, and really, we have just put
4 together our initial cut on what that set of evaluation
5 criteria might look like.

6 MR. DEL PIERO: Can you tell me about the ability to
7 finance that?

8 MR. WADLOW: Obviously, you have put your finger on
9 the most problematic aspect associated with all Category 3,
10 and that is determining the source and the mechanism for the
11 funding of the Category 3 measures.

12 The principles document made an initial financial
13 commitment on behalf of the water users community which was
14 guaranteed in the principles by Metropolitan Water District.
15 What we are in the process of doing now in the Category 3
16 work group is attempting to put together a short-term
17 mechanism via something like a memorandum of understanding,
18 as well as a long-term process for collecting, holding and
19 disbursing funds. Those are the vehicles.

20 Now, getting the people to utilize the vehicles,
21 obviously, is the key step in actually bringing money to the
22 table.

23 The principles indicated that the funding would be
24 the result of a combination of not only water user money,
25 but State and Federal appropriations as well. And so,

1 obviously, the challenging effort that's before us now is to
2 figure out how that mix works and how the vehicles are
3 developed that we use to bring those to the table.

4 MR. DEL PIERO: At this point, that's not resolved?

5 MR. WADLOW: At this point, that is not resolved. No
6 individual or agency other than Metropolitan that I am aware
7 of actually signed on the dotted line for granting money.

8 MR. DEL PIERO: Thank you.

9 MR. CAFFREY: Questions from staff? Thank you all
10 very much for your participation, and your continuing
11 efforts are appreciated.

12 Next we have Alan Lilly representing Yuba County
13 Water Agency.

14 Good morning, sir.

15 MR. LILLY: Mr. Caffrey and members of the Board,
16 thank you very much.

17 I am Alan Lilly of the firm of Bartkiewicz, Kronick &
18 Shanahan, appearing for Yuba County Water Agency. As you
19 know, we also represent other agencies in the Bay-Delta
20 proceedings.

21 I am going to talk about some things a little
22 different than what has been discussed so far this morning.

23 First of all, I want to send out a confidence. We
24 don't always agree with everything this Board does. As a
25 matter of fact, we usually have some disagreements, but I

1 think as a matter of course, you did have the Principles of
2 Agreement to build on which was a major starting point, but
3 one thing I am happy to see is the recognition of non-water
4 measures and the importance of those to solving the Bay-
5 Delta problems, particularly pages 30 through 38 of the
6 draft plan.

7 We have been harping on this throughout the last
8 summer, that it will definitely take more than just higher
9 flows or changes in water quality in the Delta to cause the
10 reversal in the decline of the Delta species, and I
11 appreciate the fact that you not only recognized it, but
12 have gone into great detail to address that.

13 I hope that this recognition on the Board's part will
14 be followed up with follow-up actions by the other agencies
15 because it just can't be solved by this Board alone. It's
16 certain the Board plays a major role, but it's going to take
17 cooperation with other regulatory agencies.

18 I won't comment on implementation. We, obviously,
19 will be talking about that if we get to the water rights
20 hearing. We still have hope that there will be positive
21 development in that regard.

22 We still have concerns about the respect for the area
23 of origin statutes but I will leave that to another day.

24 I do want to note that we are pleased to see that the
25 Principles of Agreement did explicitly recognize the

1 importance of area of origin protections in any
2 implementation process.

3 What I would like to focus my comments on today is
4 one proposed objective in the draft plan, the salmon
5 protection objective on page 16, and I just made a copy of
6 it here which I will put up on the board. As you can see,
7 it states Narrative Objective and simply states:

8 *Water quality conditions shall be maintained*
9 *together with other measures in the watershed*
10 *sufficient to achieve a doubling of production*
11 *of chinook salmon from the average production*
12 *of 1967 through 1991 consistent with the*
13 *provisions of the State and Federal law.*

14 My understanding is that this is basically carried
15 over from a sentence and I think it is Appendix B of the
16 Principles of Agreement.

17 MR. DEL PIERO: Actually, it's a reflection of the
18 statute adopted by the State Legislature about four or five
19 years ago.

20 MR. LILLY: That is correct. There is the salmon
21 steelhead and anadromous fishes protection act, and there is
22 a similar protection in the Central Valley Project
23 Improvement Act.

24 However, my concern is, I think there are some great
25 problems with carrying that over to the water quality

1 control plan and I will just mention them real quickly here,
2 three specific concerns.

3 First of all, it is unclear what this means. Is it
4 supposed to mean that the plan is asking for some specific
5 water quality objectives other than the very specific
6 numerical objectives that are stated in the plan, or is it
7 intended to be simply an affirmation or belief that those
8 other specific objectives will achieve this doubling?

9 Second, I think it is unrealistic. Water alone, I
10 think everyone recognizes, doesn't double salmon
11 populations. We went through detailed testimony about this
12 point on the Yuba River where there had been probably the
13 most extensive IFIM work of almost any of the -- at least on
14 the Sacramento Valley Rivers, and there was no evidence,
15 particularly not from Fish and Game or anyone else, that
16 their proposals would cause doubling or, in fact, any
17 increase in the average salmon population, and their IFIM
18 which indicates to the contrary, that the existing flows
19 already were at or close to the peak habitat requirements
20 for most of the life stages.

21 And it appeared that the flows they were asking for
22 might actually be on the declining end of those curves, so I
23 am concerned about the State Board adopting an objective
24 that is not realistic.

1 Third, I think this objective may be unreasonable and
2 we will follow this up with our written comments, but
3 Section 13241 of the Water Code, which governs the water
4 quality objectives, has some very specific reasonableness
5 requirements, and if the intent of this objective is to
6 require huge flows for questionable benefits to the salmon
7 species, that would be unreasonable and I think there would
8 be a mistake in this Board adopting that.

9 I just want to note the Principles of Agreement, as I
10 mentioned, do mention this doubling goal, and Mr. Del Piero
11 has correctly pointed out provisions in the State and
12 Federal law that mention that.

13 But none of those provisions say it should be put
14 verbatim into a water quality standard, and I think there's
15 some good reasons for that. It is very simply stated
16 because a water quality standard alone won't do the job. I
17 think it is good that the State and Federal agencies have
18 this goal and are working toward it, but I think we need to
19 recognize if it's achievable at all, it would take a variety
20 of measures and simply just shouldn't be put in a water
21 quality control plan.

22 I just want to go back to 1978 briefly. As you all
23 are aware, it was the water quality control plan adopted in
24 1978 which ultimately led to D-1485. The State included
25 various flow requirements and other operational matters

1 called water quality standards that were transmitted to EPA
2 under the Federal Clean Water Act.

3 The result of that, just to summarize very briefly,
4 was 17 years of legal battles as to what authority EPA had
5 to regulate flows versus what promises the State had going
6 into Section 101(g) of the Clean Water Act and so forth.

7 I think it is a very positive sign and it appears
8 that that legal dispute between this Board and EPA has been
9 resolved, or at least put on hold, hopefully put on hold for
10 a long time.

11 I think it would be a mistake to send a standard like
12 this to EPA because it might start another whole round of
13 similar legal battles, and just put very simply, if three
14 years from now we haven't seen a doubling, I think that
15 there's a very strong risk that EPA will come back to the
16 Board and say, your standards which are now a part of
17 federal law, water quality standards in the Clean Water Act,
18 and are subject to review by EPA, have not been achieved
19 and, therefore, some further action is necessary.

20 So, just to be clear, I don't object to the concept
21 of the goal of doubling. I think that is a laudable goal
22 to the extent it is reasonable to achieve, and we should
23 work on it.

24 I think it is a whole different matter and it would
25 be a serious mistake to put something like that in here, and

1 frankly, I don't think the Principles of Agreement require
2 you to do this.

3 I think this was listed as the goal and not a
4 specific water quality control standard that was supposed to
5 be part of the plan that this Board adopts to carry out that
6 agreement.

7 So, with that, I would be glad to answer any
8 questions and I will follow up before March 10th with
9 written comments on this plan.

10 MR. CAFFREY: Thank you, Mr. Lilly. We appreciate
11 that.

12 Are there questions from the Board members?

13 Anything from staff?

14 All right, thank you, sir. Good to see you.

15 Next we have Chris Hyashi again representing now the
16 San Francisco Public Utilities Commission.

17 Good morning, again.

18 MS. HYASHI: Good morning. I had to step outside and
19 get my other hat.

20 I wanted to present these comments on behalf of the
21 San Francisco Public Utilities Commission, which is a
22 signatory to the comments provided today by the joint
23 agencies.

24 In addition to those comments, however, San Francisco
25 would also like to submit the following brief comments to

1 the Draft Water Quality Control Plan, and the accompanying
2 Draft Environmental Impact Report for the purpose of today's
3 hearing.

4 San Francisco will be submitting more detailed
5 comments prior to the March 10 deadline.

6 The Principles of Agreement represent the first
7 important step towards resolving Delta problems. It
8 embodies the concurrence of the north and south as well as
9 urban, agricultural and environmental interests in the State
10 of California.

11 This consensus process should provide a model for
12 addressing other outstanding Delta issues such as
13 allocation, long-term policy issues and long-term
14 environmental protection, and creation of reliable water
15 supply at a reasonable cost.

16 The principles did not attempt to address all Bay-
17 Delta related problems, however. Implementation, allocation
18 of responsibilities for meeting standards and biological
19 justification for measures to protect endangered species are
20 all subjects that remain to be addressed.

21 Future actions by the Board and other interested
22 parties must be directed toward resolution of all these
23 issues.

24 I would like to go over a brief list of preliminary
25 concerns by San Francisco, but before I do so, I would like

1 to join the other commenters who have commended the Board
2 and staff in the preparation of this water quality control
3 plan and accompanying environmental documents.

4 A few of San Francisco's specific concerns include
5 the fact that while the plan can, in theory, stand on its
6 own for purposes of complying with the Porter-Cologne Act
7 over the next three years, as a practical matter, the plan
8 cannot be divorced from an implementation plan which
9 includes non-project water users.

10 Implementation of the plan will require allocation of
11 responsibility perhaps beyond the State and Federal projects
12 and other measures to address non-flow actions. The Draft
13 Environmental Report states that the environmental effect of
14 the standards contained in the plan are largely speculative
15 and that an environmental document will be prepared in
16 conjunction with the allocation plan.

17 At that time, the Board will have to perform economic
18 balancing and environmental analysis as required under the
19 Porter-Cologne Act and other State laws. This balancing may
20 ultimately require reconsideration of the standards
21 themselves.

22 Second, the Draft Environmental Report does not
23 appear to clearly identify the scope of actions under
24 analysis. It is unclear whether the intended scope of the

1 Draft EIR is an analysis of the three-year Principles of
2 Agreement or of the longer-term plan.

3 For example, on page 7-4 of the Draft Environmental
4 Report, it indicates a modeling assumption that if there is
5 insufficient water in New Melones to meet all of the
6 requirements for the South Delta, the model will obtain
7 additional water from the San Joaquin River upstream from
8 the confluence of the Stanislaus River.

9 This creates at least two conflicts:

10 First, there is no provision in the Principles of
11 Agreement for calling on upstream water beyond that to be
12 supplied by New Melones.

13 And second, in the biological opinion the reasonable
14 and prudent alternative for Delta smelt states that if there
15 is insufficient water in New Melones to meet the
16 requirements of the biological opinion, the standard may be
17 relaxed.

18 Third, the Draft Environmental Report states that a
19 cap on freshwater releases for salinity control on the San
20 Joaquin River is reasonable because a salinity control over
21 the long term is unlikely to be achieved exclusively through
22 releases of high quality water from upstream reservoirs.

23 San Francisco concurs with this statement and
24 recommends that the Board take the measures advocated by the
25 joint agencies and their comments to clarify the intention

1 in relation to the South Delta agricultural objective and
2 the San Joaquin River dissolved oxygen objective.

3 Fourth, the Board should not adopt the inference that
4 biological justification exists linking the San Joaquin
5 River flows to Delta smelt abundance. To date, there is
6 insufficient evidence to validate the reasonable and prudent
7 alternative contained in the biological opinion for Delta
8 smelt, the effectiveness of transport or the necessity of
9 San Joaquin River flows when the Old River barrier is
10 installed.

11 The San Joaquin standards are to be reviewed over the
12 next three years to evaluate the scientific support for
13 these measures.

14 Fifth, in the section discussing the environmental
15 effects of the preferred alternative, the discussion of the
16 San Joaquin River flows does not mention the Old River
17 barrier to be installed during the fall period. Mention of
18 the recent use of the Old River barrier as a measure to
19 improve survival of out-migrating smolts is also absent in
20 the discussion of the chinook salmon on the San Joaquin
21 River. These failures to mention the Old River barrier are
22 contradictory to the recommendation by the Board and by the
23 Principles of Agreement to install the barrier.

1 Finally, overall the Draft Environmental Report has a
2 tendency to presuppose broad-based allocation of
3 responsibility for meeting Delta requirements.

4 In conclusion, San Francisco looks forward to
5 participating in the consensus process to reach a
6 comprehensive solution for the Bay-Delta. However, that
7 solution must respect water rights and State water laws.

8 It would not be appropriate or legally supportable to
9 impose a solution that results in a compensated taking of
10 water from one user simply to give it to another. There are
11 mechanisms available to apportion responsibility in a manner
12 that is consistent with the applicable law and we refer to
13 the Board an example specified in the August 25, 1994, CUWA
14 recommendations to the State Board on Bay-Delta standards at
15 page 36 and 37.

16 Thank you for the opportunity to comment today, and I
17 would be happy to take any questions.

18 MR. CAFFREY: Thank you.

19 Any questions from Board members?

20 Anything from staff?

21 Thank you very much.

22 Let me just say that we will now be taking a break.
23 I have a message from Mr. Porgans and I am aware, sir, of
24 your time constraints, and if we don't get to you in the
25 regular order before 11:30, I will take you out of order and

1 make sure you are allowed to make your presentation before
2 you have to leave.

3 Let me read the remaining order:

4 We have Tom Zuckerman, Richard Golb, Craig Willey,
5 Steve McAdam, which is a new one that came in a little bit
6 late, and that is the remaining of the government officials.
7 And then, after that, we will go to the other grouping of
8 the regular citizenry, so to speak.

9 With that, we will take a ten-minute break and see
10 you back here in ten minutes sharp.

11 (Recess)

12 MR. CAFFREY: If you will all take your seats, we
13 will resume the hearing.

14 Good morning, Mr. Zuckerman, welcome.

15 MR. ZUCKERMAN: Thank you, Mr. Chairman and members.

16 My name is Tom Zuckerman. I am co-counsel for the
17 Central Delta Water Agency and I have presented a written
18 statement which is brief, and I intend to go through that
19 quickly, if I may.

20 The Central Delta Water Agency's primary focus is on
21 maintaining a water supply suitable both in terms of quality
22 and quantity on the lands adjacent to the channels with the
23 Central Delta. These lands are used mainly for agriculture
24 now, although wildlife habitat and recreational uses are
25 important and growing in significance.

1 The creation and activities of the Delta Protection
2 Commission have added emphasis to preservation and
3 enhancement of agricultural, recreational and habitat uses
4 of the Central Delta lands and waterways.

5 This iteration of a water quality control plan has
6 been focused on arresting the dramatic decline of aquatic
7 populations that depend upon the Bay-Delta Estuary, several
8 of which are threatened with extinction. Agricultural
9 issues have not been revisited, nor have recreational or
10 land-based habitat uses been re-examined other than by
11 inference.

12 Although the current concentration on aquatic
13 populations is understandable, we urge you not to abandon
14 direct concern for protection of agricultural, recreational
15 and land-based habitat uses in your future deliberations.

16 A specific comment on the agricultural needs follows.
17 The agricultural standards brought forward from D-1485 into
18 this draft plan are restricted to the period from April 1 to
19 August 15. Although most irrigation occurs during this
20 period, water is diverted from the channels onto lands in
21 the Central Delta for critical agricultural uses in every
22 month of the year. Some crops are still being irrigated
23 into the fall, and pre-irrigation of crops can begin as
24 early as January, February or March, particularly after a
25 dry winter.

1 Leaching of salts accumulated by previous
2 evapotranspiration of crops and native vegetation requires
3 water diversion and application in the fall and winter
4 months.

5 Although the water quality needs for irrigation and
6 leaching after August 15 and before April 1 can be, and
7 usually are met by water quality standards designed to
8 protect other uses, such as fishery and export quality
9 needs, explicit recognition of the water quality needs of
10 agriculture on a year-round regime should eventually be
11 reflected in agricultural water quality standards for every
12 month.

13 A particular concern to us are the potential impacts
14 of Delta cross channel closures and increased San Joaquin
15 River flows on water quality in the Central Delta. It is
16 likely that these actions in combination will result in San
17 Joaquin River water quality which is grossly impacted by San
18 Joaquin Valley drainage, adversely impacting water quality
19 in some channels of the Central Delta.

20 When we inquired during the workshop sessions, we
21 were advised that the operation studies conducted to test
22 the different Bay-Delta plan scenarios under consideration
23 did not include resulting water quality at measuring
24 stations within the Central Delta.

1 We do not believe the Draft Environmental Report or
2 your deliberations on this draft plan can be complete
3 without such information for all months. We are particu-
4 arly concerned by the following statement which appears at
5 page VI-2 of the Draft Environmental Report:

6 *DWRSIM is not capable of analyzing the water*
7 *supply impacts of water quality objectives for*
8 *the interior stations in the Southern Delta*
9 *because of a lack of adequate understanding of*
10 *relationships between the San Joaquin River*
11 *flow and Southern Delta water quality.*

12 Because the San Joaquin River water quality could
13 have a growing impact on water quality in the Central Delta
14 with cross channel closures and increased San Joaquin River
15 flows, greater inquiry needs to be made about the sources of
16 San Joaquin River water that will be flowing into the Delta.

17 The only measuring station currently provided in the
18 draft plan is below the confluence of the Stanislaus River
19 with the San Joaquin, and the assumption appears to be that
20 increased flows for the San Joaquin River will all be
21 provided from New Melones Reservoir via the Stanislaus
22 River.

23 Such water would be of excellent quality, but the
24 Draft Environmental Report indicated that there will not
25 always be enough water in New Melones to meet the San

1 Joaquin River flow requirements. In addition, there are
2 legal and equitable demands upon waters stored in New
3 Melones which may restrict usage of waters stored in New
4 Melones to other purposes.

5 In anticipation of these problems, a water quality
6 measuring station should be established on the San Joaquin
7 River above its confluence with the Stanislaus so that the
8 flow and water quality implications of water from sources
9 other than the Stanislaus River can be anticipated and
10 understood before problems arise.

11 Without construction of the valley drain, which was
12 to be a prerequisite to contracting for water from the San
13 Luis Unit of the CVP, the CVP water evaporated from the
14 Delta will continue to add to the salt load at Vernalis. If
15 CVP exports for delivery into the portion of the Central
16 Valley which drains to the San Joaquin River are allowed to
17 continue, then an appropriate contribution of water from San
18 Luis or Friant should be required for dilution of the salts
19 added to the San Joaquin.

20 Under the Delta Protection Act, exports must be
21 limited to water which is surplus to the needs of the Delta.
22 To the extent non-regulated as well as regulated flows are
23 needed to flush salts out of the Delta, including those
24 salts contributed by way of the San Joaquin River, they are
25 not surplus and should not be subject to export.

1 We have some additional brief comments on the Draft
2 Water Quality Plan and the Draft Environmental Report:

3 1. Fish screens: We support the approach to fish
4 screening incorporated in these documents. The implication
5 of location, timing and methodology need to be much better
6 understood before what could otherwise be an extremely
7 expensive, disruptive and ineffectual construction program
8 is started.

9 2. Alternative water conveyance: We support the
10 draft plan's approach of looking at various alternatives,
11 especially in view of the increased outflow the draft plan
12 provides. Keeping the primary nursery areas well west of
13 the export pumps should reduce the impact of the export
14 pumps on the eggs, larvae and smaller fish that are hardest
15 to screen, and will probably eliminate carriage water needs.

16 Incremental solutions short of an isolated transfer
17 facility should be the most effective means of dampening the
18 impacts of water conveyance facilities. Isolated transfer
19 facilities would, in our view, violate the common pool
20 concept which is at the heart of the Delta Protection Act.

21 3. Water conservation: Delta levee maintenance is
22 critical to freshwater conservation in the Delta. Previous
23 and current studies show that evaporation from flooded
24 surfaces in the Delta uses approximately two acre-feet per
25 flooded acre more than if the same acre was farmed.

1 On farmed lands, all unconsumed water is returned to
2 the usable supply. The inescapable conclusion is that the
3 levees in the Delta need to be maintained to prevent
4 flooding of the 600,000 acres now farmed in the Delta and
5 conserve over 1.2 million acre-feet of freshwater that would
6 otherwise be lost through evaporation from flooded surfaces.

7 We thank you for the opportunity to present our views
8 on these important subjects. Thank you.

9 MR. CAFFREY: And we thank you, Mr. Zuckerman.

10 Are there questions from the Board members?

11 Anything from staff?

12 Ms. Leidigh.

13 MS. LEIDIGH: Mr. Zuckerman, do you have any written
14 comments for the Board?

15 MR. ZUCKERMAN: I gave you 20 copies before the thing
16 began. Did you all get --

17 MR. DEL PIERO: I am in receipt of it.

18 MR. CAFFREY: Thank you very much, Mr. Zuckerman.

19 We will hear now from Richard Golb representing
20 Northern California Water Agencies, and then, after Mr.
21 Golb, we will go out of order and take Mr. Porgans, who has
22 a time problem, and I will also announce that I erred in
23 placing a couple of cards and I apologize to Mr. Chatigny
24 and Mr. Johnston, who represent government agencies, and I
25 had them in the wrong grouping.

1 So, we will take you gentlemen up a little bit sooner
2 than had been originally anticipated.

3 Good morning, Mr. Golb.

4 MR. GOLB: Good morning, Mr. Chairman and members of
5 the Board.

6 My name is Richard Golb. I am Executive Director of
7 the Northern California Water Association. We have over 45
8 agricultural water suppliers, water companies and private
9 landowners in the Sacramento Valley encompassing over
10 600,000 acres of farm land.

11 NCWA is a signatory to the December 15 Principles of
12 Agreement, and continues to strongly support it, and we do
13 so for very simple reasons. We think that that agreement
14 will provide sufficient protection for fish and biological
15 resources of the Bay-Delta.

16 We were also pleased the agreement contained specific
17 language directing the State Water Resources Control Board
18 to act in compliance with all provisions of California water
19 law, including the water rights priority system and the area
20 of origin statutes.

21 As the Board considers the adoption of the water
22 quality control plan, I offer the following recommendations:

23 Within the December 15 agreement there is one section
24 regarding principles for implementation of Category 3
25 activities, and that section calls for a financial

1 commitment annually of up to 60 million dollars. Today, as
2 the Board well knows, there are a number of both State and
3 Federal programs and funding mechanisms that are focused on
4 protecting many of the same fish species and biological
5 resources as the water quality control plan now before the
6 Board.

7 One example would be the CVPIA 50 million dollar
8 restoration fund.

9 Before the Board levies any, call them what you will,
10 user fees, financial contributions, whatever, on the water
11 users, I would recommend that the Board undertake an
12 exhaustive review of all the current State and Federal
13 programs.

14 Now, I am not suggesting that we eliminate any
15 successful programs that are under way at this point. What
16 I am suggesting is that if there are programs that can be
17 better directed to meet the priorities established in the
18 December 15 agreement, that the Board should do so. And I
19 believe, as was indicated earlier today, this is consistent
20 with the December 15 agreement.

21 I would also recommend that the Board undertake a
22 rigorous analysis of the plan analyzing both the possible
23 social and economic consequences that it may have on the
24 water users in the state.

1 You know, it is equally critical that we protect
2 these biological resources, but it is also important that we
3 understand the potential costs, both social and economic,
4 that those environmental protections may have.

5 Finally, and this may be the shortest testimony I
6 have ever provided, finally, as Dan Nelson indicated
7 earlier, we have coordinated a group of upstream water
8 rights holders, both from the Sacramento Valley and the San
9 Joaquin Valley. This upstream group has met once with the
10 CUWA-Ag group. We have scheduled additional meetings. The
11 goal is pretty simple, we want to see if we can develop an
12 approach and possibly a solution to some of the issues that
13 the Board will consider during this implementation phase.

14 But I would caution the Board that we have some real
15 difficulties ahead of us and we know that. As the Governor
16 said during the December 15 announcement, there is rough
17 sledding ahead. I think that might be mild, if not
18 optimistic.

19 There are some difficulties in front of us. We
20 recognize that. We are hopeful, we will work as hard as we
21 can, but I think at this point it is just a little bit too
22 soon to place any expectations on this effort.

23 I encourage the Board not to put too much emphasis on
24 what we are attempting to do.

25 With that, I would be happy to answer any questions.

1 MR. CAFFREY: Thank you very much.

2 Are there questions from Board members?

3 Anything from staff?

4 Thank you, sir. Good to see you.

5 Mr. Porgans, good morning, sir.

6 MR. PORGANS: Good morning, Mr. Chairman and members
7 of the Board.

8 My name is Patrick Porgans. I am a publisher and
9 copies of these have been provided to your staff. My
10 testimony is contained in that.

11 And essentially, I am also a founder and charter
12 member of the Club Fed Up.

13 I appreciate everything everyone has to say here
14 today. I went to bed at 4:30 and thought I was going to
15 beat everyone today and was the third card signed in.
16 However, I have to wait for all the other entities, the so-
17 called government entities, to go before me.

18 Now, of course, I am going to find out how I'm going
19 to change that. If I am here early, I want to be heard
20 first. I am a citizen of this state, this country, and I
21 have rights, too. Okay.

22 With that said, it is only a minor detail, you
23 understand, I don't feel anybody is any better than me.

24 Now, getting into my testimony, since the inception
25 of this plan, it has been a moving target. Even the day it

1 was announced -- the day before it was announced I was
2 trying to find out what it was all about, who was going to
3 be involved, and even where it was going to be at, and I
4 couldn't get even that detailed information until about 4:19
5 the day before, and it was Mr. McCracken who was running
6 into the Public Relations Office over at the Bureau of
7 Reclamation yelling, we finally know where it is going to
8 be, we know who is going to be involved. I thought he was
9 getting a refund at the French connection here.

10 It's ridiculous. This is one of the most important
11 things facing this state and I can't find out who is going
12 to be involved less than 24 hours before it happens.

13 And as you may or may not know, I was not involved in
14 the consensus, although as the Board recognizes, I was
15 involved in the hearing process for almost five years and
16 unlike the districts that have money from their people that
17 are in the districts that they assess, I paid for this out
18 of my own pocket.

19 Okay. So you understand that.

20 Now, getting into some of the general details about
21 this plan on this so-called agreement, which by the way, it
22 just happened to be most of the people that were involved in
23 creating the problem that put it together. I take exception
24 to that, too. I have to have the foxes in the hen house, so
25 to speak.

1 The Department of Water Resources, the Bureau of
2 Reclamation have a track record of creating serious problems
3 with their water projects and I have to continually stay on
4 top of them to try to find out ways to enlighten them.

5 I am thinking about having a conference on romper
6 room 101, the doobies and the dopies and how to conduct
7 yourself in accordance with the laws that already exist.
8 They just don't seem to understand that.

9 The plan, admittedly, does not guarantee the
10 reasonable protection of the estuary, fish and wildlife and
11 personal uses. Instead, the plan *will protect fish and*
12 *wildlife beneficial uses at a level which will stabilize or*
13 *enhance the conditions of aquatic resources.*

14 However, when it comes to other uses of the plan, it
15 will *insure reasonable protection of municipal, industrial*
16 *and agricultural beneficial uses.*

17 However, as one probes it becomes clear that all of
18 the numbers are fluid. The State Board estimates that the
19 water cost of the plan will be somewhere between 300 and 900
20 thousand acre-feet, the 900 thousand being the drought
21 years.

22 The water costs, however, are estimated by comparing
23 the plan's Delta export rates with inflated-based export
24 rates, thus producing inflated water costs.

1 A better approach is to compare the plan's Delta
2 exports with historical actual Delta exports that caused the
3 decline in Delta fisheries. When this comparison is done,
4 the results show that the State Board's plan would allow the
5 State and Federal projects to export more water.

6 On that note, I wanted to provide the Board with some
7 graphics. I don't have one of my many assistants with me
8 today, so you will have to forgive me.

9 Anyway, on that end over there is the estimated
10 annual runoff and then below the dry and normal.

11 There's something a lot of these people forget. This
12 is the natural profile of the water type years that we have
13 had here in the Sacramento basin since we have been
14 recording information. That data shows us that there is a
15 very wide disparity in the amount of runoff we receive here.

16 If we look at the `28 to `34 period, which a lot of
17 these operations are based on, we had conditions that
18 existed then which didn't have high levels of export rates.
19 Now we are back into the base period where you are using in
20 the plan the `84 to `92 period, which essentially is one of
21 the worst-case scenarios simply because now we have these
22 demands that are being imposed on the system.

23 We need to go back and look at something different
24 than what we are looking at in the plan if we want to get a
25 better indication as to what really is going on. If we look

1 at the data, this is export demand from '67 through '78, we
2 see that the average exports were 3.2 million acre-feet and
3 a high of 4.9.

4 From the '84 to the '92 period, we are looking at 4.9
5 average with a high of 6.1 maximum.

6 If we look at the range of export demands in the plan
7 for the 1984-94 period, we are actually looking at an
8 increase up to 5 million acre-feet of average exports.

9 All of this data is from DWR Day Flow data. Here is
10 the historical Delta inflow diverted and we are looking at
11 the 1956 through 1990 period, and then we are looking at the
12 pre State water project period, and then we are looking at
13 the post D-1485 period, and then we looked at the drought
14 period, '87 through '92, the point being we can look at the
15 historical demands on the system and we see that, for
16 example, the months of October, November, December and
17 January, where the Department of Water Resources and the
18 Bureau are talking about 65 percent of the water -- there we
19 are in October of 63 percent, and every month after that we
20 have less than that right into January, which is about 50
21 percent.

22 If you average those figures out, historically we
23 have never taken more than 55 percent during those months.

24 In addition to that, which is even more important,
25 with the weasel wording that goes into these plans, is that

1 63 percent includes Delta in-channel diversions -- includes,
2 and that's another million acre-feet of water or more.

3 DWR and the Bureau are talking about taking 65
4 percent, not counting in-Delta.

5 Now, the reason why I am concerned about this sort of
6 thing is we know how much pumping takes place during the
7 1987-1990 period. We had historical levels of pumping going
8 on and we had significant impacts associated with that
9 pumping, and some of you Board members are new, but I was
10 here in '88 and I was saying what they were going to do
11 because they had to keep their agricultural contractors
12 economically solvent down there, and the Bank of America and
13 the boys, you know, have some investments -- and the girls,
14 excuse me.

15 My point is that this system cannot handle the kind
16 of export levels that they are talking about here. It just
17 cannot handle it under a certain type of conditions. This
18 plan discards key west flow criteria that require the
19 streamflow in the Delta to flow downstream, the natural
20 direction. Instead the plan executes a less restrictive
21 export-inflow ratio that allows double exports to continue
22 at rates that are damaging to fisheries.

23 The ratio was substituted even though no definitive
24 studies or analyses were completed to support export-inflow
25 restrictions.

1 According to the Governor, no additional species will
2 be listed unless there are some unforeseen circumstances.
3 Well, I am looking into finding out why it was that the
4 Sacramento splittail was sort of pulled off the list because
5 there was some pressure going on internally. Some people in
6 the Department allegedly were saying they would pull out of
7 the negotiations if they listed splittail. If I can't get a
8 splittail listed when it looks like it should have been
9 listed, what unforeseen circumstances are we talking about?

10 The State Water Board staff, with all due respect to
11 their staff, I have the highest regard for their staff, and,
12 of course, they are basing their information on DWR's data
13 and everybody else's data because most of the information
14 that's contained in this report is not this Board's
15 information. It is information coming in from other
16 sources.

17 There are several environmental determinations in the
18 environmental checklist. For example, the checklist
19 concluded that the plan will cause substantial reduction in
20 the amount of water otherwise available for public water
21 supplies. The figures don't show us that.

22 It also considers that the plan will result in no
23 deterioration of existing fish and wildlife.

1 Finally, the checklist concluded that the project
2 will result in increased groundwater withdrawals to replace
3 decreased water supply.

4 The new plan opens up the peripheral canal and my
5 sources have already told me, we had six-pack and right-of-
6 way people from DWR down there, you know, looking at opening
7 up negotiations again.

8 The truce was hammered out by the same interests that
9 created the problem -- I need them to come back here and
10 direct this Board as to how they should go forward with
11 protecting my resources when they are the ones responsible
12 for it.

13 Let's hypothesize for a minute. I am not really that
14 academically inclined. You may have noted that already.
15 Let's hypothesize for a minute and say that these so-called
16 standards, which I don't know when they are going to be
17 enforced, if they are going to be enforced, and I agree with
18 some of the former speakers about, you know, we have a
19 little bit of a gray area here; we have a water quality
20 standard and we have a flow issue which somehow may go over
21 the line in terms of the water rights issue and somebody is
22 going to have to come in and get a quickie fix to get around
23 that D-1485 stuff in order to go forward, and, you know, not
24 have to change the point of diversion or maybe not meet a
25 standard.

1 But let's hypothesize and say for a minute, Mr.
2 Chairman, for the sake of discussion, that we put all this
3 plan together, we get this general agreement going, and then
4 they do not comply with the law.

5 I am sorry I have to ask you this, Mr. Chairman, but
6 I am compelled out of necessity and I reiterate, who will
7 enforce it? Historically, when they violated the law, they
8 just got away with it.

9 I can't find anywhere where this Board actually made
10 an actual vote on that series of hearings that we held on
11 those violations. I can't find that yet, but you can
12 believe I am looking.

13 My last point is going back to Ms. Forster's
14 statement when we were at the Board meeting last week and we
15 were talking about the San Joaquin Valley and the salinity
16 issues, and we asked the Board to send that plan back
17 because of its gross inadequacies.

18 We also pointed out between 1988 and 1992, that the
19 standards, salinity standards, on the San Joaquin River were
20 exceeded 82 percent of the time between '82 and '92. In '93
21 and '94, 11 out of 12 months they were in violation.

22 The Regional Board has a track record of creating
23 problems. We don't have a plan and it is going to take
24 three to five more years to do something about it.

1 So, in conclusion, I suggest as a member of the
2 public, de facto public trustee, we can no longer wait for
3 the learned ones, the knowledgeable ones to make decisions
4 about how they are going to correct problems that they have
5 created.

6 I need this Board to enforce the law. That's what I
7 need and I have every expectation that it will, and on that
8 note, if there are any questions, indulge me.

9 MR. CAFFREY: Thank you, Mr. Porgans.

10 Anything from Board members of Mr. Porgans at this
11 time?

12 Anything from staff?

13 Are you going to give us copies of your
14 transparencies? If they are in your publication, I didn't
15 see them.

16 MR. PORGANS: Yes, I am.

17 Excuse me, Mr. Chairman, one last note. Thank you
18 for bringing me back here.

19 Ms. Carla Bard, whom I have the highest respect for,
20 used to be the Chairperson of this particular Board,
21 testified over here at the Senate committee hearings before
22 Senator Hayden, and I just wanted to read one paragraph of
23 her statement. We will submit this as part of the record.

24 I want to speak plainly. This was a totally
25 political agreement negotiated in secret,

1 contrary to law, by the State and Federal
2 regulators charged with the protection of
3 water, fish and wildlife resources. It was not
4 based on 'good science.'

5 *Well, there are some improvements from previous*
6 *water flows and standards. The new flows are*
7 *untested and most of the remaining runs of*
8 *California chinook may be doomed --*
9 and she goes on from there.

10 I will be submitting something from Senator Nejedly,
11 who had similar comments in regard to the same things I am
12 raising. I am not alone.

13 MR. CAFFREY: Thank you, Mr. Porgans.

14 Craig Willey from San Joaquin County. Welcome.

15 MR. WILLEY: Good morning.

16 My name is Craig Willey and I am an attorney, and I
17 am here to present the comments of San Joaquin County.

18 San Joaquin County recognizes and appreciates the
19 work of the State Water Resources Control Board and others
20 to develop water quality standards for the Bay-Delta
21 Estuary.

22 As a significant portion of the San Joaquin-
23 Sacramento Delta lies in the County and many County
24 residents use its waters for consumptive and recreational

1 purposes, we understand the need to balance diverse
2 interests when protecting this valuable resource.

3 There exists, however, a significant aspect of the
4 proposed standards that does not provide for a fair balance.
5 Specifically, the County is very concerned with the
6 establishment of only one water quality measuring point on
7 the San Joaquin River.

8 The location of this water quality measuring point at
9 Vernalis, below the San Joaquin's confluence with the
10 Stanislaus and the exclusion of other measuring points,
11 unfairly places the entire burden of meeting the San Joaquin
12 River water quality requirements on the Stanislaus and does
13 not fairly allocate that burden to other tributaries of the
14 San Joaquin.

15 As you know, San Joaquin County has a critically
16 overdrafted groundwater basin in the eastern portion of the
17 County. We are in need of supplemental surface water to
18 combat this overdraft. The Stockton East Water District has
19 a contract with the U. S. Bureau of Reclamation for a
20 supplemental surface supply from New Melones, but Stockton
21 East has yet to receive a single drop of water under this
22 contract.

23 The Central San Joaquin Irrigation District also has
24 not received any water under its Bureau contract.

1 In the two years in which the Stockton East Water
2 District has had the facilities in place to accept water
3 from New Melones, the Bureau has determined that all project
4 yield was needed to meet downstream water quality and fish
5 and wildlife requirements in the San Joaquin and Delta. In
6 fact, the Bureau allocated 200,000 acre-feet of the 800,000
7 acre-feet prescription under the Central Valley Project
8 Improvement Act to the Stanislaus River, an unfair and
9 unjustified act.

10 Even before the Central Valley Project Improvement
11 Act, the Bureau of Reclamation has used releases from New
12 Melones Reservoir to meet its Delta water quality
13 obligations.

14 As you are well aware, the west-side drain was
15 designed to be part of the Central Valley Project but has
16 not been completed.

17 As a result, the salts and other materials present in
18 agricultural tailwater drain from the west side of the
19 valley into the San Joaquin River. In other words, the San
20 Joaquin River has become the drain for the Bureau's
21 deliveries to the west side of the valley. The Bureau has
22 used releases from New Melones Reservoir to dilute the salts
23 so that Delta water quality standards are met.

24 Despite knowing about this problem, the Bureau has
25 continued to deliver water to the west side of the valley to

1 the detriment of the San Joaquin River and those relying on
2 water from New Melones as a water supply.

3 These activities must be alleviated either through
4 the construction of a west-side drain or through stopping
5 the deliveries of water that caused the problem in the San
6 Joaquin.

7 As the Board is well aware, all of the natural flows
8 of the San Joaquin are stopped at Friant Dam where they are
9 diverted to the Friant-Kern and Madera Canals to irrigate
10 land in Madera, Fresno, Tulare and Kern Counties.

11 The natural flows of the Tuolumne are stopped at New
12 Don Pedro Dam and significant quantities are diverted out of
13 that river and delivered through a pipeline to serve
14 residents of the Bay Area.

15 While the County does not contend that the natural
16 flows of the Tuolumne and San Joaquin should be fully
17 restored, the County does not believe that the burden to
18 make up the difference for the water lost to these
19 diversions be placed entirely on the Stanislaus as it is by
20 the single measuring point.

21 Placing only one measuring point on the San Joaquin
22 encourages the Bureau to use New Melones as the sole means
23 to regulate water quality standards in the Delta. Placing a
24 water quality measuring point on the San Joaquin below its
25 confluence with the Merced River would more fairly allocate

1 the burden of meeting water quality standards in the San
2 Joaquin and the Delta, and would provide more information as
3 to the conditions in the river so that releases could be
4 optimized.

5 The same salinity standards that exist for Vernalis
6 should exist for this Merced measuring point. Also, flow
7 standards should be established for the Merced measuring
8 point.

9 Contributions of water from the Friant service area,
10 San Luis Reservoir and other alternatives should be
11 considered in addressing water quality and flows in the San
12 Joaquin River.

13 Again, the County commends the State Board and others
14 for tackling one of the State's most pressing and
15 contentious issues, water quality standards in the Bay and
16 the Delta. The County supports the barriers used to improve
17 water quality that are already in the plan and proposed by
18 the South Delta Water Agency.

19 However, the Board must be sensitive to the fact that
20 the Stanislaus River has historically borne the brunt of
21 meeting these standards and that by only placing one
22 measuring point on the San Joaquin below its confluence with
23 the Stanislaus, encourages this activity to continue.

24 We hope that the Board will establish a second
25 measuring point on the San Joaquin below the Merced and

1 address the issues of drainage from lands on the west side
2 of the valley that currently are leaching salts into the San
3 Joaquin.

4 We believe that these measures will help improve
5 conditions in the San Joaquin and Delta, and will help the
6 residents of our County.

7 Thank you.

8 MR. CAFFREY: Are there questions for Mr. Willey by
9 Board members?

10 Anything from staff?

11 Thank you very much. You are now submitting your
12 written comments?

13 MR. WILLEY: Yes.

14 MR. CAFFREY: William R. Johnston, San Joaquin River
15 Tributary Agencies.

16 MR. JOHNSTON: Good morning, Mr. Chairman and Board
17 members.

18 My name is William R. Johnston. I am speaking today
19 on behalf of the San Joaquin Tributary Agencies, which is
20 Merced, Modesto, Oakdale, South San Joaquin and Turlock
21 Irrigation Districts. These Districts are upstream water
22 right holders on the Merced, Tuolumne and Stanislaus Rivers
23 in the San Joaquin Basin.

24 We have some general comments under the heading of
25 water rights, State Project, Central Valley Project, pumping

1 impacts, striped bass, salmon models, San Joaquin River flow
2 standards, salinity and water supply impacts.

3 In regard to water rights, California has an
4 established water rights system which allows for the orderly
5 allocation and use of its water supply. As is pointed out
6 in the draft plan, the watershed protection and area of
7 origin statutes accord first priority to water rights for
8 use within the watershed. The Central Valley Project and
9 State Water Project water rights are subject to these
10 provisions, and diversions for export by these projects are
11 restricted until the needs in the watershed, including
12 protections for beneficial uses in the Bay-Delta Estuary are
13 met in regard to the SWP and CVP pumping impacts.

14 Salmon operations have been severely affected by
15 pumping operations in the Delta and peak chinook salmon
16 losses occur at State and Federal export pumps in April
17 through June when the fall-run smolts are passing through
18 the Delta.

19 The burden of dealing with these project created
20 impacts cannot be transferred to other entities. The
21 projects alone must be held responsible for flows necessary
22 to permit export pumping, whether these flows are
23 operational, carriage water or additional flows to offset
24 and mitigate these project impacts.

1 In regard to striped bass, as pointed out on numerous
2 occasions by the San Joaquin Tributary Agencies and its
3 members, there's no reason to adopt striped bass water
4 quality standards. We believe that:

5 (1) There is no real scientific evidence that a
6 salinity barrier to mitigation exists;

7 (2) Even if such barrier did exist, it would
8 not affect the production of striped bass
9 because as broadcast spawners they are not
10 spawning habitat limited; and

11 (3) If the striped bass did spawn farther
12 upstream, the eggs and larvae would be
13 susceptible to increased entrainment at the
14 State and Federal pumping facilities.

15 From a policy standpoint, it is inappropriate to set
16 standards to improve the habitat for exotic species that are
17 a known threat to native species, particularly the chinook
18 salmon.

19 In regard to salmon models, if the statistical
20 validity of the Fish and Wildlife model is so criticized,
21 why is the State Board using it for analysis?

22 The San Joaquin Tributary Agencies and others have
23 presented testimony at previous State Board hearings and
24 workshops regarding the suitability and use of the Fish and
25 Wildlife Service smolt survival model.

1 As pointed out at the October 13, and again at the
2 October 19, 1994, workshops, the model incorrectly uses and
3 interprets the smolt survival data. As a result, it is
4 inappropriate to use the model for the purpose of
5 determining outflows and for setting policy.

6 We have provided the State Board with a full copy of
7 a paper entitled, *Estimating the Influence of Temperature on*
8 *the Survival of Chinook Salmon Smolts Migrating Through the*
9 *San Joaquin-Sacramento Delta of California.*

10 The paper points out that with the correct
11 interpretation of the Fish and Wildlife Service data, salmon
12 smolts can survive at temperatures substantially higher than
13 those being recommended by the Fish and Wildlife Service.
14 The Fish and Wildlife Service analysis indicates that
15 increases in temperature between 61 and 72 degrees
16 Fahrenheit will result in a linear increase in smolt
17 mortality.

18 Our analysis indicates that survival is relatively
19 insensitive to temperature until about 70 degrees
20 Fahrenheit.

21 The models do, however, show the significance that
22 the Old River barrier has on the survival of salmon smolts
23 migrating through the Delta, figures VIII-29 and VIII-30 in
24 the environmental report show that with the Old River
25 barrier in place, smolt survival is more than doubled.

1 Even though we disagree with the U. S. Fish and
2 Wildlife Service model, we used their model in our analysis,
3 and each salmon population model shows a three- to four-fold
4 increase in salmon population over the base case through a
5 ten-year period of analysis.

6 In regard to the San Joaquin River standards, the
7 stated purpose for the San Joaquin River flow standards is
8 to move smolts past the pumps and export-related impacts, or
9 move them from upstream areas, which is not a Delta issue.

10 If the pumps are the cause of the decline of the
11 species, then it is the export projects that must mitigate
12 for their own project-related impacts.

13 Moving to smolts in upstream areas is a subject that
14 is being addressed currently in other forums and should not
15 be included in this plan. There is no scientific basis for
16 the flows that are recommended. These flow standards were
17 never presented at any public forum and parties have had no
18 opportunity to comment on them. The flows we agreed to were
19 during the last-minute negotiations prior to the December
20 15, 1994, Bay-Delta announcement.

21 They appear to be based on recommendations of the
22 Fish and Wildlife Service for the benefit of the Delta smelt
23 rather than flows necessary for the protection of the
24 chinook salmon.

1 The preferred alternative in the draft plan fails to
2 include an Old River barrier as recommended by all the
3 parties to the Bay-Delta process, and as required under the
4 Principles for Agreement on the Bay-Delta standards between
5 the State of California and the Federal Government. This
6 includes the EPA, the Department of the Interior, and the
7 State of California.

8 To ignore the agreement and require the use of a
9 large quantity of water to provide protection for the salmon
10 or the smelt where a physical solution is recognized by the
11 State Board, advanced by the State and Federal Governments
12 and endorsed by the signators to the Bay-Delta, will be a
13 tremendous waste and an unreasonable allocation of water for
14 public trust purposes.

15 We believe the Board must adopt the plan that
16 includes a barrier. If there is no barrier, there must be a
17 limit placed on Delta exports substantially below one
18 hundred percent of the San Joaquin flows,
19 particularly during the salmon out-migration period.

20 In regard to the salinity issue, the use of water to
21 dilute the pollution of others is not a listed beneficial
22 uses of San Joaquin River water. We believe that the State
23 Board and Regional Water Quality Control Board must enforce
24 the San Joaquin River water salinity standard by requiring

1 those discharging saline water into the river to cease such
2 discharges.

3 The program of implementation should, instead,
4 describe the steps that must be taken to reduce the salt
5 load entering the river rather than relying on additional
6 water flows to dilute such salt.

7 The only real solution to the San Joaquin Valley
8 salinity problem is to export the salt from the valley
9 through an isolated channel. I believe this is something
10 you have supported. Identifying additional releases from
11 other reservoirs as may be required through ongoing and
12 future court proceedings is inappropriate.

13 The USBR New Melones project is obligated as a
14 condition of the water rights permit to meet certain
15 salinity standards in the Southern Delta and it is
16 inappropriate to suggest that upstream water users
17 contribute flows to meet permit conditions of a junior water
18 appropriator.

19 The only appropriate way to meet the salinity
20 objectives is to reduce or eliminate the salt discharges to
21 the San Joaquin River.

22 Since much of the salt entering the San Joaquin River
23 originates in the Central Valley Project service area, it
24 appears that the burden to solve the salinity problems also
25 belongs on the CVP.

1 In regard to water supply impacts, there should be no
2 interference, implied or otherwise, regarding the
3 distribution of water supply impacts to anyone other than
4 the Central Valley Project and the State Water Project.

5 The draft plan covers only a three-year period.
6 During the three-year period, the USBR is required to meet
7 the San Joaquin River flow objectives in accordance with the
8 biological opinion for Delta smelt. The flows provided by
9 the Bureau are described as interim flows and will be re-
10 evaluated as to timing and magnitude within the next three
11 years.

12 The State Board is not even considering allocation of
13 flows at this time. The allocation process will be the
14 subject of a water rights proceeding which is scheduled to
15 commence following the adoption of the draft plan. At that
16 time, the State Board has stated it will allocate
17 responsibility for meeting the San Joaquin River flow
18 objectives among the water right holders in the watershed,
19 after considering the water right priority system, watershed
20 protection and area of origin laws, and decisions by the
21 Federal Energy Regulatory Commission and other regulatory
22 agencies.

23 Consequently, the impacts described in the
24 environmental report should only be limited to those areas
25 dependent upon flows provided by the USBR's entitlement from

1 New Melones. The proper time to evaluate the impacts of any
2 proposed allocation scheme is during the water rights phase.

3 In addition, CEQA requires that the State Board
4 prepare an Environmental Impact Report before issuing any
5 order reallocating water to benefit public trust resources
6 in the Bay-Delta Estuary.

7 This concludes my comments at this time.

8 Today we have provided you with a letter signed by
9 the managers of the San Joaquin Tributary Agencies.

10 We will again, and possibly the individual agencies,
11 will be providing additional detailed comments to the draft
12 plan and environmental report prior to your March 10 comment
13 deadline.

14 I would be happy to answer any questions.

15 MR. CAFFREY: Thank you very much, Mr. Johnston.

16 Any questions from Board members?

17 Anything from staff at this time?

18 Thank you, sir, we will look forward to reading your
19 document and whatever else you may be submitting.

20 I think this is as good a time as any to probably
21 break for lunch.

22 Let me read the cards that we will take up when we
23 get back: Mr. Chatigny, Steve McAdam, Nat Bingham, Jim
24 Easton, Greg Thomas, Jerry Bobker, Margaret Johnston,
25 Christopher Foster and Lowell Landowski.

1 There have been some cards added as we have moved
2 through the day.

3 We will be back at one o'clock this afternoon.

4 Thank you.

5 (Noon recess)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 THURSDAY, FEBRUARY 23, 1995, 1:00 P.M.

2 --o0o--

3 MR. CAFFREY: Let's take our seats and we will resume
4 the hearing.

5 Good afternoon and welcome back.

6 Mr. Pettit and Ms. Forster are working on some Clean
7 Water Act issues and I am not sure they will be able to join
8 us for the rest of the afternoon, but in any event, they
9 will have the record available to them to read.

10 Mr. Chatigny, are you here, representing DTAC.

11 MR. CHATIGNY: Now that everyone had a nice lunch,
12 good afternoon, Mr. Caffrey and Board members.

13 I am here as Manager of Nevada Irrigation District,
14 but also, as Chairman of the Delta Tributary Agencies
15 Committee.

16 You have been presented with a written copy of my
17 comments so I will not go over all of them, but I do want to
18 bring some things to your attention.

19 We are here in response to your Notice of Public
20 Hearing regarding the December, 1994, Draft Water Quality
21 Control Plan.

22 As a reminder, Delta Tributary Agencies Committee
23 consists of 30 water agencies with service areas situated
24 within the Sacramento River and the San Joaquin River
25 Basins. You have a list of those 30 agencies.

1 All the members of the agencies either possess pre-
2 1914 or post-1914 appropriative water rights or riparian
3 water rights. Individual members will be presenting their
4 own items for your consideration in regard to the response
5 to the notice.

6 It is the intent of our testimony before you today to
7 remind the Board of its water rights hearings that are set
8 to commence perhaps in June of 1995, by which you propose to
9 allocate the water necessary to meet the water quality
10 objectives that you intend to adopt in these proceedings.

11 We know that you are aware there are ongoing
12 settlement negotiations between what is referred to as the
13 Ag/CUWA group and the upstream users. Within this group of
14 upstream users, Delta Tributary Agencies comprise at least
15 six or seven of the major negotiating group of thirteen, so
16 we are actively engaged in proceeding toward working out
17 some type of consensus if it can be reached, and we would
18 like to do this in order to avoid, if possible, the
19 subsequent water rights implementation proceedings to meet
20 the quality objectives that you intend to adopt.

21 We must remind you, however, that the State-Federal-
22 Ag/CUWA settlement of December 15 was a true consensus in
23 the eyes of DTAC. Not one member of 30 DTAC agencies had
24 been invited or was able to attend any of those meetings,
25 and we are the major providers of much of the water that is

1 being used by the water users within the State of
2 California.

3 We presented testimony to your Board in September of
4 1987 at the Red Lion Inn in Redding where we did bring forth
5 some items and some information in regard to the beneficial
6 uses of the water storage facilities that the members of
7 DTAC used, and I refer you to those submittals for your
8 review when and if it is necessary.

9 We urge you to be mindful of the reasonable and
10 beneficial uses of water of all our 30 DTAC member agencies
11 so that when you adopt these quality objectives in this
12 proceeding you will not force yourselves in the subsequent
13 water rights hearings to deviate from California's water
14 right priority system in order to reallocate water to
15 achieve this share-the-pain concept that some exporters
16 claim is required in the Racanelli decision.

17 If I may at this time, I would like to diverge and
18 tell a little story, if I may. It has nothing to do with
19 bathtub rings.

20 As we are all aware, the water projects started
21 sometime in the fifties, the State Water Project
22 specifically. I was able to purchase a 1955 Ford pickup in
23 the early seventies, which is about the time the water right
24 phases came about to authorize the water for some of the
25 projects. That is forty years old as we compute the

1 numbers. So that makes the Delta system, the exporters, the
2 projects, approximately forty years also.

3 Well, my truck is now in the process of being
4 overhauled, rejuvenated, restored, to be brought back up so
5 I can put it to a beneficial use again.

6 But during the time that I have owned it, I have
7 talked to it, I have said nice things to it when it did what
8 I wanted it to do, I have also kicked the tires, I have also
9 said some bad words to it when it didn't do what I wanted it
10 to do.

11 We do the same thing and we have been doing the same
12 thing to the Delta. When it was working right, it was the
13 greatest thing in the world. We said nice things about it.

14 Now that it is not working right in some people's
15 minds, we say bad things about it.

16 So, as I am doing with my truck, I am restoring it.
17 I have taken it all apart, sandblasted it, I have changed
18 some parts on it and even overhauled the drive train, and I
19 would liken the drive train of the truck to the export pumps
20 of the Delta.

21 Some of the facilities within the Delta and as part
22 of that drive train, there is something missing in the
23 Delta, and I think we would look at that as part of the
24 cross channel facilities perhaps, or maybe that nasty P word
25 that some people have talked about in years past. The truck

1 needed overhauling. It served its purpose for many many
2 years, but it went into disrepair either by non-use or by
3 overuse, and that is the same problem that we have had at
4 times with the Delta.

5 So now, we are trying to fix it. I am about to fix
6 my own truck. I am using my own resources. The benefit of
7 fixing the truck is going to be to my benefit and I am using
8 my own dollars, my own time, and my own labor and own
9 facilities to repair that.

10 And so, I would liken again the fixing of the Delta
11 to be paid for, to be provided for by the people that are
12 going to use the Delta for their benefit, and I would say
13 that the exporters are the ones that use it.

14 That's mostly from my own personal observation and
15 from myself as General Manager of the irrigation district,
16 and from some of my Board of Directors from the District.

17 So, if we could work on our own items, if we can put
18 them back in order, why can't we all put the Delta back in
19 order if we put our minds to it and put our facilities and
20 our wherewithal to make it work for everyone?

21 Again, DTAC reaffirms its statement of principles for
22 the Bay-Delta proceedings that we provided to you in June of
23 1991. And four of the principles adopted by DTAC are:

1 1. The State Board should recognize and follow
2 area of origin and watershed protection
3 principles.

4 2. The State Board should recognize the unique
5 impacts of Delta water exports and require
6 those exporters to mitigate their adverse
7 environmental impacts.

8 3. Consistent with principles (1) and (2), the
9 State Board must rely on the priority system to
10 allocate the responsibility for Bay-Delta water
11 quality objectives and flow requirements.

12 4. Municipal and domestic users should receive
13 no special preference in the allocation of
14 responsibility to maintain Bay-Delta water
15 quality objectives and flow requirements.

16 And finally, the districts recognize that this is a
17 very difficult political and legal administrative
18 proceeding, and that any decision which you will make is
19 certain to be criticized by different groups or individuals
20 representing a specific use of water which they may claim is
21 put to more beneficial use.

22 The same thing with my truck. My wife says why are
23 you spending all that money on the truck? You should be
24 buying something for the house. Well, I felt that the

1 priority should go to the truck for a while and she will get
2 the house things later.

3 So, statutorily authorized and historically we have
4 resulted in billions of dollars of economic decisions and
5 agency water development contractual commitments, all of
6 which are being provided by members of DTAC for the benefit
7 and the support of the economy of the State of California,
8 and we hope that you take that into consideration as you
9 make a global approach to setting the water quality
10 standards within the Delta through these proceedings.

11 Thank you.

12 MR. CAFFREY: Thank you, Mr. Chatigny.

13 Questions from Board members?

14 Anything from staff?

15 Thank you, sir.

16 I am going to take the next presenter out of order
17 because there is a time constraint problem, and I will call
18 on Gary Bobker of the Bay Institute.

19 Good afternoon, sir.

20 MR. BOBKER: Good afternoon, Mr. Caffrey and members
21 of the Board.

22 Thank you for accommodating a time need.

23 My name is Gary Bobker from the Bay Institute of San
24 Francisco.

25 What I want to do is to discuss three things:

1 Number one, the way in which the water quality
2 control plan is characterized, what it is and what it isn't.

3 Secondly, I want to discuss the deficiencies of the
4 plan and the tools which I think exist within the context of
5 the plan as well as in other initiatives concurrent with the
6 plan's adoption that are designed to correct those
7 deficiencies.

8 And third, I want to discuss the limitation measures
9 particularly as they relate to the water quality objectives
10 in the plan.

11 First of all, with regard to what the plan really
12 does, I think that the way that I would characterize it is
13 that this plan would finally allow you to fulfill the charge
14 that the Governor laid on you almost three years ago, to
15 come up with interim measures which would halt the decline
16 of the Bay-Delta resources, and I believe that implementing
17 this plan will help to do that.

18 Basically, what it is going to do is stabilize the
19 populations of a number of Bay-Delta species and in some
20 cases it is going to allow partial recovery for those
21 resources. In some other cases it probably will do nothing
22 at all and we will need to address those species through
23 some other means.

24 The Corps protections that are contained in the plan
25 are obviously the new habitat requirements and export

1 criteria for the February-June period, the critical spawning
2 and migration period. Adoption of those measures, we
3 believe, will benefit a broad range of resident species in
4 the Delta as well as the anadromous fish that are using the
5 estuary during that time period.

6 And the biggest benefits come from the new estuary
7 salinity standards that are in effect during that time
8 period.

9 The water quality plan incorrectly describes those
10 standards as Delta outflow standards. Although there is
11 clear agreement that those standards can be met using either
12 salinity or outflow measures, the fact is that the standards
13 themselves are based on significant correlations found
14 between salinity in Suisun Bay and the abundance of aquatic
15 organisms. They are not based on the correlations found
16 between outflow and aquatic organism abundance, although
17 such relationships may also exist.

18 The fact is that that's not what these standards are
19 based on. Therefore, I suggest it would be more correct to
20 characterize these in the most precise form as Suisun Bay
21 salinity standards, perhaps less accurately, more generally
22 as estuarine habitat standards that would reflect both the
23 biological justification for the standards as well as the
24 high level of unity that exists between the scientific and

1 management community that salinity was a more appropriate
2 measure to use in terms of estuarine habitat.

3 What I think the agreement allows us to do besides
4 giving us some real benefits in the February-June period, is
5 it also gives us a window of opportunity, a phrase used by
6 John Krautkraemer in the signing of the December 15, 1994,
7 Principles of Agreement. That opportunity allows us to move
8 toward the possibility of both more comprehensive water
9 management regimes and greater environmental restoration.

10 Let me repeat the last part, and greater
11 environmental restoration.

12 What this plan does not do by any stretch of the
13 imagination is achieve the highest water quality reasonable,
14 as the plan puts it, required by law. I believe that these
15 are truly interim standards with some serious deficiencies.

16 We believe that it is clear that the State and
17 Federal water quality laws and public trust considerations
18 require much more from the Board in the long term, and that
19 not to do much more in the way of environmental protection
20 and restoration will also retreat from the commitment that
21 was made by this Board in the past in D-1485 to offset the
22 impacts of the major water projects and the beneficial uses
23 of estuary water and the Racanelli court's charge to the
24 Board to expand that commitment to include all users that
25 affect the estuary.

1 Outside of the benefits concentrated in the January-
2 February period, what the plan does not achieve is the
3 highest water quality reasonable for biological resources
4 outside of the February-June period.

5 We don't believe that the export criteria, the cross
6 channel gate closures, the other operational requirements
7 during that period in and of themselves are sufficient as
8 direct protections for biological resources. That's
9 especially critical in the case of spring-run salmon, fall-
10 run chinook salmon and steelhead, essentially anadromous
11 fish in the estuary in the November-January period.

12 These are all fish populations that are at extremely
13 depressed levels, all meriting listing, in my opinion.

14 We also are concerned about fish present in the lower
15 San Joaquin during spring pulse flows because of the direct
16 export that is in place at that time.

17 And the concerns that we have about the export
18 criteria and other operational requirements not being
19 protective enough were reflected in a lot of comments we
20 made in the past, in the series of workshops held by the
21 Board.

22 Nonetheless, we signed the agreement. We support the
23 adoption of this water quality plan. The reason is that we
24 believe there are mechanisms available to us to mitigate for
25 those deficiencies and our support for this plan is premised

1 on the assumption that we are going to use all those
2 mechanisms aggressively.

3 That's a very serious responsibility both for this
4 Board and the other parties involved. Some of those
5 mechanisms involve most importantly the adequate exercise of
6 operational flexibility to vary the export criteria because
7 that's a particularly important period of high risk to
8 biological resources.

9 A comment I should throw in here is that there's a
10 lot of weight being put on the decision-making process for
11 the operations coordinations group, a heavy responsibility
12 here, and the structure of that group and the process by
13 which it makes decisions really needs to be clarified and
14 codified a little bit more before this plan is adopted. I
15 think all parties involved would like to see that happen.
16 It would give us greater certainty how exactly we are going
17 to use operational flexibility.

18 Second, complete funding and implementation of the
19 Category 3 habitat improvement program is extremely
20 important. I have been involved in steering the ad hoc
21 committee and we are addressing a lot of the issues like
22 project criteria, project implementation issues. Good work
23 is being done.

24 The question now is, is there going to be money to do
25 these projects? The clear intent of that program was to

1 inject new funds into habitat improvement efforts. We are
2 eagerly awaiting funding commitments to follow up on the one
3 that was made by Metropolitan Water District.

4 I think there is a feeling that things like pre-
5 existing funds like the CVPIA are going to be available.
6 That's not the case. A lot of those funds like the CVPIA
7 are fairly restricted.

8 The real need is to get some new money in and we are
9 interested in seeing that followed up on. I think that the
10 National Heritage Institute will have some additional
11 comments on what can be done in those areas.

12 The whole area of Category 3 kind of reminds me of
13 the old saying, be careful what you wish for because you
14 just might get it.

15 And the water user community has urged these non-flow
16 related measures for a long time. We agree they are
17 important in addition to flow. Obviously, we now have a
18 program and it's time to make sure that it is adequately
19 funded.

20 The final element I want to focus on in terms of
21 implementation mechanisms that correct deficiencies of the
22 plan outside of the direct scope of the Board is simply the
23 prompt and effective allocation of the flows that were
24 mandated by CVPIA to double anadromous fish populations in
25 the Central Valley. That's going to be a very important

1 safety net for salmon, and all of these things are going to
2 be important as a safety net for salmonid stocks that are at
3 high risk.

4 And I guess the language of the water quality control
5 plan should acknowledge the linkage between the success of
6 these other State and Federal and voluntary initiatives.
7 Essentially the success of the plan rides on the success of
8 these other initiatives. They all rise and fall together.

9 The final thing I want to talk about was the
10 narrative water quality objectives, for example, the Suisun
11 Marsh. Obviously, narrative criteria don't represent
12 improved protections for the Bay, but instead, what they
13 really do is identify wherever the gaps occurring in the
14 protection lie, and in theory, move us towards resolving
15 those problems.

16 What narrative objectives, in fact, we don't need is
17 file and forget, and that's a real danger with narrative
18 criteria.

19 What I think the Board omitted from the water quality
20 control plan section on program implementation was the
21 section that specifically dealt with implementation of
22 narrative objectives.

23 The guidance from the Federal Government on adoption
24 of narrative criteria states when you adopt narrative
25 criteria, you should indicate how the application is going

1 to be accomplished, and what that means is what kind of
2 data-gathering measurements procedures and other things that
3 you are going to do that will eventually lead to the
4 development of numeric criteria.

5 I think the Board has already made sort of a step in
6 that direction in terms of the Suisun Marsh narrative
7 criteria with the idea of the Suisun Marsh ecological work
8 group.

9 The narrative objective for the brackish tidal marsh
10 of Suisun Bay and Suisun Marsh really present us with a very
11 exciting opportunity to look at the marsh as an ecosystem
12 and start protecting in terms of biodiversity and habitat.
13 At the same time the Board has in the past refused to allow
14 deficiency relaxations under the Suisun Marsh preservation
15 agreement because of the potential impacts on those brackish
16 marshes.

17 We believe that the solution the Board has come up
18 with in the Draft Water Quality Control Plan is a good one,
19 but that adoption of the marsh regime should be made
20 conditional on the establishment of this Suisun Marsh
21 ecological work group and that group should be required to
22 report to this Board on its progress towards developing
23 measures that both give us a better picture of how we are
24 doing in protecting biodiversity in the marsh and on

1 assessing the real impacts of the new regulatory regime on
2 the beneficial uses of the marsh.

3 Turning to the salmon, the narrative water quality
4 objective calls for the doubling of chinook salmon
5 populations. I don't think that anyone in their right mind
6 who has looked at the evidence on salmon or the exhibits and
7 testimony offered by the resources agencies thinks that the
8 export criteria operational requirements contained in the
9 plan are going to accomplish the doubling of chinook salmon
10 over the baseline.

11 In fact, based on what I said earlier, I think we are
12 going to be hard pressed to hold the line for the runs that
13 are at high risk in the November-January period.

14 So, what I really think needs to happen is the Board
15 needs to set a goal of developing measures that will be used
16 to gauge our success in meeting the narrative water
17 objectives.

18 We made a start on this working on EPA's proposed
19 salmon survival index and there were a lot of good revisions
20 made to that in 1994, and we should build on that in the
21 future to try and come up with something that will give us a
22 better gauge of how we are doing with salmon.

23 Another thing about salmon I should mention is that
24 looking above the Delta, the Board has been conducting some
25 proceedings to look at instream flow requirements on the

1 tributaries and I think expeditious completion of that for
2 all tributaries to support salmon runs and reversing in-
3 stream flow requirements in order to reach the goals of this
4 standard since it does include measures in the upstream
5 areas, it would be appropriate.

6 One final implementation step for salmon might be to
7 recommend a fund to augment salmon flows to water purchases
8 either through recommendations to water agencies, water
9 users and others through voluntary efforts or through water
10 user fees as has been proposed in the past.

11 There's a big challenge there and I encourage the
12 Board to rise to that challenge.

13 The narrative criteria, the mechanisms of operational
14 flexibility, the expectations that are set for Category 3
15 and for the other factors, are all parts of the glue that's
16 going to keep this window of opportunity together. They all
17 need to be aggressively pursued if we are going to reach the
18 longer term, more comprehensive solutions that everyone is
19 interested in, and that concludes my prepared remarks.

20 MR. CAFFREY: Thank you very much, Gary.

21 Any comments. Anything from staff?

22 Thank you very much, Mr. Bobker.

23 Steve McAdams, Assistant Director, San Francisco Bay
24 Commission.

25 Good afternoon.

1 MR. MCADAMS: Mr. Chairman and members of the Board,
2 my name is Steve McAdam and as you indicated, I am Assistant
3 Director of the San Francisco Bay Conservation and
4 Development Commission.

5 In the late 1980's, in order to insure that the
6 policies of the San Francisco Bay plan and Suisun Marsh
7 protection plan were considered by the Board, our Commission
8 actively participated in the Board's hearing process to
9 update the water quality standards set in the water quality
10 control plan for the Delta and Suisun Marsh and Decision
11 1485.

12 Subsequent to these hearings, the Board adopted in
13 1991 a water quality control plan for salinity, which our
14 Commission believed would not adequately protect the fish
15 and wildlife resources of the Bay and Suisun Marsh.

16 We have consulted our hydrologist, Phil Williams &
17 Associates, and used the Commission's previous testimony in
18 preparing the following comments on the Draft Water Quality
19 Control Plan for the San Francisco Bay-Sacramento-San
20 Joaquin Delta Estuary.

21 In general, we commend the staff's work in presenting
22 you with a draft plan that represents a significant step
23 forward in addressing some of the Commission's major
24 concerns over the adverse impacts of upstream diversion of
25 freshwater inflow to the estuary.

1 We believe this draft plan offers a good chance of
2 arresting the decline in key environmental resources of San
3 Francisco Bay.

4 While it appears that protection is still inadequate
5 for the salmon fishery, the framework agreement and the
6 draft plan provide a breathing space that might allow
7 stabilization of estuarine resources and should allow for an
8 opportunity to develop a better understanding of the most
9 effective measures to restore resources that will be
10 required in the future.

11 Therefore, we support the draft plan as one step in a
12 longer process aimed at restoring the estuary's
13 environmental resources. Briefly, we offer a few
14 suggestions to make the draft plan more protective of the
15 Bay ecosystem in general, and specifically, to the tidal
16 brackish marshes in the Western Suisun Marsh.

17 First, we believe that for any long-term plan to be
18 effective, there has to be some statement as to what are
19 optimum, acceptable and unacceptable levels of a resource by
20 which management actions are measured. Thus, we recommend
21 that an important task under the special studies program
22 contained in the draft plan be devoted to characterizing
23 thresholds, historic conditions and optimal levels of key
24 species.

1 Second, we have in the past emphasized the importance
2 of maintaining the goals and standardss for protecting the
3 wetlands of Suisun Marsh as enacted in Decision 1485.

4 Although the increased Delta outflow required by the
5 draft plan should help in maintaining brackish conditions in
6 the managed and tidal wetlands in the Eastern Marsh, they
7 are certainly insufficient in dry years to improve
8 conditions in the Western Marsh, and we have consistently
9 advocated the need for salinity standards to prevent the
10 continued encroachment of salt water into the tidal wetlands
11 of Suisun Marsh.

12 Third, the draft plan should include a specific
13 requirement for the mitigation of adverse salinity impacts
14 on brackish tidal wetlands through restoration of this type
15 of habitat elsewhere in the Suisun Marsh.

16 Fourth, the draft plan might be interpreted to
17 endorse the discharge of San Joaquin Valley agricultural
18 drainage water into San Francisco Bay. To insure that salt
19 and agricultural pollutants are dealt with on site, we would
20 emphasize the need for source control and discourage the use
21 of reservoir releases for pollution dilution in the San
22 Joaquin River.

23 Fifth, the Commission has previously testified on the
24 need to consider protection for the entire San Francisco Bay
25 Estuary ecosystem including the important role of South Bay,

1 which includes 40 percent of the total estuary. The draft
2 plan should explain the reason for excluding mention of the
3 important role that freshwater flow pulses play in improving
4 water quality, increasing primary production and reducing
5 toxicity of benthic organisms in the South Bay, and should
6 include a monitoring and research program aimed at
7 developing recommended standards for the South Bay in the
8 future.

9 Sixth, although coordination and direction of the
10 research and monitoring efforts on the estuary have
11 improved, we are concerned that the draft plan will not
12 require a coherent research and monitoring program that is
13 aimed at answering the important management questions.

14 In the draft plan description of the monitoring
15 program, it is clear that the monitoring will not include
16 key resources such as the South Bay and will inadequately
17 characterize the San Pablo Bay.

18 There is also little emphasis on important
19 hydrologic, hydrodynamic and geomorphic processes affecting
20 the estuary.

21 And, although the draft plan endorses the concept of
22 an ecosystem approach, to its credit, it does not maximize
23 the opportunity to develop an understanding of the complete
24 estuarine ecosystem and the place freshwater plays in its
25 functioning.

1 In conclusion, we hope that these comments will be
2 helpful to the Board in its consideration of the draft plan.
3 We support adoption of the draft plan and are hopeful that
4 the final plan, and the Board's subsequent implementation
5 actions, will reflect these comments.

6 If you have any questions, I would be happy to answer
7 them.

8 MR. CAFFREY: Thank you very much.

9 Are there questions? Staff?

10 Thank you very much for being here. We appreciate
11 your comments.

12 Nat Bingham, Habitat Director, PCFFA.

13 MR. BINGHAM: Good afternoon, Mr. Chairman and
14 members of the Board.

15 My name is Nat Bingham, and as you said, I am Habitat
16 Director, former President of the Pacific Coast Federation
17 of Fishermen's Association.

18 I have been an active commercial fishermen for the
19 past 30 years. Now I am pretty much full time trying to
20 represent fish in this difficult and complex process you are
21 going through.

22 Unfortunately, as much as we would have liked to have
23 been, we were not part of the discussions and negotiations
24 that led to the December 15 agreement. I think everybody
25 afterward felt like maybe we should have been there, but as

1 often happens with fishermen, we were overlooked and we are
2 now gratified that we have been invited to participate in
3 the Category 3 process, and we are there and we have also
4 been invited to participate in the long-term planning
5 process for the Delta.

6 But, as we have learned from a lot of the testimony
7 that we have heard today, and I have to agree with just
8 about 95 percent of what Mr. Bobker just recently said to
9 you and many other speakers have said regarding the
10 deficiencies of the agreement and the plan in regard to
11 salmon protection, particularly in regard to the late fall
12 run, spring run and possibly the winter run, although it
13 looks better for the winter run, and certainly, I have to
14 recognize there is some pretty good protection for the fall
15 run, which is the mainstay of our commercial fishery.

16 Those other runs of salmon do need to be explicitly
17 protected and right now the way the agreement seems to be
18 structured, my understanding is that an awful lot of burden
19 is placed on this so-called operations or Ops committee to
20 use a limited amount of water that is available in a
21 flexible way to address the protection when fish are out-
22 migrating through the system.

23 If we have learned anything in our past years of
24 experience in the Delta, it is simply that more than

1 anything else successful out-migration of salmonids to the
2 sea is dependent on adequate flows.

3 There are a lot of non-flow related factors that can
4 be looked at and are often addressed. The success, I think,
5 is dependent on good planning and a lot of other things, and
6 we know that when fish get through the system, there's a lot
7 of water, and so, in this interim period that we are in now,
8 this three-year period, I urge you to be conservative.

9 And I would also disagree with one of the previous
10 speakers today who argued that explicit salmon protection
11 standards should not be part of the water quality plan. I
12 would argue that they should be, very explicitly so, because
13 right now until we have some long-term solutions in place
14 and we have an operating system that, frankly, we as
15 fishermen can trust, and I am sorry to say at this time we
16 don't all feel we can trust government in this as fishermen,
17 we would like to be represented in that operations process
18 so that we can watch-dog and make sure that the right thing
19 is going to be done for the fish.

20 Too often when we get into a technical group behind
21 closed doors or in a relatively inaccessible process, bad
22 decisions get made. That is the long history that we have
23 seen from the fishery. I won't delineate it for you because
24 you all heard plenty of times before.

1 The tragedy of the extinction of the spring-run
2 salmon on the San Joaquin River is something that we as
3 fishermen will never forget or forgive. It is just a fact
4 we have to live with, but it has certainly affected us in
5 our industry and we will never forget it.

6 What I passed out to you is a suggested possible
7 over-arching biological resource objective that you might
8 want to put in your plan. It is the first cut of what I
9 think might be a good definition of ecosystem management. I
10 will read it to you:

11 Preserve, restore, or where those are not
12 possible, simulate an ecosystem that provides
13 for the integrity of biological resources as defined
14 by composition, structure and function.

15 It might be something you might consider adding to
16 your plan as sort of an overall statement to reassure us
17 folks out there on the ocean.

18 And with that, I will be happy to answer any
19 questions.

20 MR. CAFFREY: Thank you very much, Mr. Bingham.

21 Are there any questions?

22 Thank you, sir, for being here and thank you for
23 waiting.

24 It is starting to become a long day.

25 Jim Easton, Delta Wetlands.

1 Good afternoon, Mr. Easton.

2 MR. EASTON: Good afternoon, Mr. Chairman and members
3 of the Board, Mr. Pettit and staff.

4 I am Jim Easton and I am pleased to make the
5 following comments on behalf of Delta Wetlands regarding the
6 Draft Water Quality Control Plan.

7 This plan certainly reflects the arduous and intense
8 effort by your Board, your staff and those who crafted the
9 State and Federal agreement. We are optimistic that the
10 proposed standards will provide the protection required and
11 the certainty pulled for by all users of the Delta,
12 including fish and wildlife, agricultural, urban and
13 industrial entities.

14 In Delta Wetlands' view, the adaptive management
15 strategies and real time monitoring ideas in the plan are
16 concepts that are extremely important and overdue for use in
17 the Delta. Delta Wetlands strongly supports the flexibility
18 inherent in a plan that provides specific standards along
19 with an operations group capable of evaluating conditions
20 and recommending modified operations consistent with the
21 environmental protection of the Delta and efficient
22 management of the State's water supplies.

23 To begin our discussion of the specifics of the plan,
24 we would like to recommend an addition to the draft
25 environmental document that accompanies the plan. The

1 document recognizes the need to enhance water supply
2 reliability through the construction of additional off-
3 stream storage and projects that are identified in that
4 report as being under consideration or development are Los
5 Banos Grandes, Domenigoni Valley, Los Vaqueros Reservoirs.

6 We strongly recommend that Delta Wetlands be included
7 in that group.

8 The Board is presently processing Delta Wetlands'
9 water rights applications. With the release of the water
10 quality control plan, the project's environmental
11 documentation should be completed in relatively short order,
12 or at least we fervently hope it will be completed in
13 relatively short order.

14 As you are aware, your Board, together with the
15 Corps, is acting as co-lead agency in the preparation of the
16 environmental documents for our project. We hope that the
17 Board will make a high priority of the completion of this
18 long awaited environmental document because as soon as
19 that's finished and goes out for public review, we can then
20 proceed to the water rights hearings, and once we have
21 obtained a water right permit and the other permits that
22 will be required of the project, we can have Delta Wetlands
23 operational within one year.

24 Delta Wetlands is an important and very viable
25 project in terms of providing enhanced water supply,

1 increased water supply reliability and conserve water that
2 would otherwise flow to the ocean in excess of Delta outflow
3 requirements.

4 This project offers a ready supply of water located
5 in the Sourthern Delta and because of its location and its
6 proximity to the export facilities, Delta Wetlands will be
7 able to respond rapidly to water supply needs.

8 Water diverted to storage on Delta Wetlands'
9 reservoir islands can be exported later in the year when
10 there's capacity for wheeling at the export facilities.
11 Also, water stored on the reservoir islands can be used to
12 contribute to Delta outflow or for other environmental
13 purposes as well.

14 It's the flexibility, the strategic location and the
15 rapid response capability which merits consideration of
16 Delta Wetlands as an important component in the Board's
17 recommendation to improve water supply reliability by
18 increasing off-stream storage. For these reasons, the Delta
19 Wetlands should be included in the environmental document as
20 a viable off-stream storage project presently under
21 consideration.

22 As I mentioned, the EIR/EIS for our project is being
23 prepared by Jones & Stokes Associates with your Board and
24 the Corps as co-lead agencies. The document is currently
25 being revised to evaluate Delta Wetlands' operational

1 impacts under the water quality control plan standards. The
2 analysis includes a broad range of interpretations of the
3 new standards to consider a variety of operational
4 scenarios. Modeling shows that Delta Wetlands remains a
5 viable project under the new water quality control plan
6 standards.

7 We recognize that the draft standards do not
8 specifically describe how a facility such as Delta Wetlands
9 will operate, nor do the standards provide how north to
10 south water transfers or in-Delta water transfers are going
11 to be treated.

12 We believe that these types of projects and
13 activities can function within the guidelines set out in the
14 water quality control plan. All that remains to be
15 determined is how the standards will be interpreted in
16 certain situations.

17 We urge the Board to consider carefully these
18 different projects and activities within the Delta and to
19 recognize the similarities and the differences between these
20 activities and projects when you determine how the standards
21 will be applied.

22 We are not proposing specific interpretive language
23 for the Board to consider at this time. We understand that,
24 because of the size, location and importance of the Delta
25 Wetlands project to both water supply and reliability

1 and to water transfers, the Board may want to hold in
2 abeyance any decision concerning how the standards will be
3 applied to in-Delta storage projects, such as Delta
4 Wetlands.

5 If the Board decides to wait until the upcoming
6 hearing on Delta Wetlands' water rights applications, it
7 will then have the opportunity to evaluate specifically
8 Delta Wetlands' analysis and to utilize the tremendous
9 amount of thought and energy that have gone into those
10 analyses.

11 At a minimum, however, we believe that the water
12 quality control plan standards should be recognized to
13 encompass all exports from the Delta through the CVP/SWP
14 pumping facilities, including the Bureau and State Water
15 Project contract water, water transfers and water from in-
16 Delta storage projects like Delta Wetlands.

17 The standards presented in the water quality control
18 plan represent an opportunity to define conditions in which
19 water supply operations and fish and wildlife protection
20 needs can be met. The standards not only provide rules in
21 which water supply projects must operate, but also, a
22 recovery-based approach to meeting fish and wildlife needs.

23 : We are very optimistic that so long as these
24 standards are being met, adequate environmental protection
25 is being provided.

1 We are confident that the Board will recognize the
2 far-reaching effect of its efforts when considering other
3 projects in the Delta, such as north to south water
4 transfers and in-Delta storage projects like Delta Wetlands.
5 These activities and projects should be evaluated in terms
6 of their ability to operate within the standards and not
7 only in terms of their environmental effect on the Delta,
8 but also, for their potential to enhance overall water
9 supply and contribute to more efficient management of the
10 Bay-Delta ecosystem.

11 I thank you for your time, and I would be pleased to
12 answer any questions if there are any.

13 MR. CAFFREY: Thank you, Mr. Easton.

14 Are there questions?

15 Mr. Brown.

16 MR. BROWN: Jim, what is the revised or the now
17 current projected yield of this project in cost per acre-
18 foot?

19 MR. EASTON: The cost per acre-foot -- I don't think
20 we have come up with a cost per acre-foot, John. One of the
21 reasons we haven't done that is we don't know what it is
22 going to cost yet until we are further down the road to
23 getting permitted, but we are finding that the yield of the
24 project, even with the new standards applied in several

1 different ways, will still leave us with a sufficient yield
2 to have a viable project.

3 MR. BROWN: Do you have a range of what the costs
4 might be that you expect?

5 MR. EASTON: Not that I can give you right now.

6 MR. BROWN: Thank you.

7 MR. CAFFREY: Thank you very much, Mr. Easton,
8 appreciate your being here.

9 Greg Thomas, President of the National Heritage
10 Institute.

11 Good afternoon, sir.

12 MR. THOMAS: Good afternoon.

13 Mr. Chairman and members of the Board, I did provide
14 you with a written statement which I will now endeavor to
15 summarize quickly.

16 I am Greg Thomas, President of the National Heritage
17 Institute. We are a party to the historic Delta agreement
18 in support of the water quality control plan which emanates
19 from that agreement, both because we believe that it will
20 help to stabilize the public trust resources of the estuary,
21 and also, because it provides the foundation, as we view it,
22 for a longer term planning process which we hope can lead to
23 even more optimal environmental standards for the estuary.

24 The current agreement, of course, is predicated upon
25 facilities as they now exist in water management

1 institutions as they now exist. The purpose of a long-term
2 planning process is to improve upon that status quo, but, of
3 course, this Delta agreement should not be regarded as a
4 Panacea. It is simply an interim protection program which
5 represents -- not a ceiling but really a floor on
6 protections for the estuary.

7 In addition to the more protective measures that we
8 hope will result in the long-term planning process, other
9 protective activities will, of course, continue to move
10 forward, including the doubling plan of the CVPIA,
11 environmental water purchases under the CVPIA, and other
12 authorities, and perhaps most importantly at least the
13 prospect of measures taken by regulatory management agencies
14 to avoid the need for listing of additional endangered
15 species; or absent those protective measures, the invocation
16 of the protections of the Endangered Species Act.

17 We continue in the wake of this agreement to have
18 concerns over the species that have been the subject of our
19 own petitions in NHI, the splittail, the longfin smelt and a
20 species that is not currently the subject of a petition but
21 is almost certainly eligible, and that is the spring-run
22 salmon.

23 This water quality control plan, of course,
24 promulgates water quality standards in the Delta agreement,
25 but it is important to recognize that the Board's

1 responsibility under this agreement extends beyond the
2 traditional water quality setting.

3 EPA's commitment to withdraw the federal proposal is
4 contingent not merely on the promulgation of State water
5 quality standards, but the State's adoption of a Bay-Delta
6 protection plan that will provide protection equivalent to
7 those that are available under the federal promulgations,
8 and it is that larger planning effort that I want to address
9 here for a moment.

10 This Delta agreement is full of promise and prospect,
11 but whether it will actually translate into improvement in
12 the estuary is very much the problem before this Board.

13 It has to be made real and the Board should not
14 regard its role here as simply passive as though the parties
15 themselves are going to serve up on a silver platter all of
16 the content of this plan that you are in the process of
17 developing.

18 Particularly with respect to two features of this
19 Delta agreement, I believe the Board is going to need to
20 play a proactive role. The first important opportunity and
21 challenge for you, I think, is with respect to this
22 operations coordination rule.

23 Now, one of the triumphs of this Delta agreement was
24 the concept of operational flexibility so that as much
25 protection as possible could be accomplished within a water

1 budget through real time hands-on, finely tuned management
2 program with all of the parties involved.

3 That's supposed to be the role of this operations
4 coordination with this Ops group with final appeal of
5 disputes to Cal-Fed.

6 Because of the central role that this body plays, it
7 is important that it work well. In fact, the success of the
8 water quality control plan will largely depend upon how well
9 this Ops group works and we believe that you can improve the
10 prospect of it working well by providing in the water
11 quality control plan, at least on a default basis, at least
12 if the parties themselves, the members of the Ops group,
13 don't come up with a charter for the operation of the
14 institution, we believe you should do so in the water
15 quality control plan.

16 The charter, we believe, needs to reflect the balance
17 of interests that produced the agreement as voting members
18 with the addition of commercial and sportfishermen, who
19 should have been part of the negotiations and now should be
20 part of the operations group.

21 That charter should specify the voting members, the
22 voting rules, the rules for convening and the conduct of
23 meetings, and the criteria process for referring these views
24 to Cal-Fed, we believe.

1 It should also deal with the procedural milieu in
2 which the Ops group is going to have to operate.
3 Particularly, it appears to us as though it is going to be
4 important to charter this Ops group under the Federal
5 Advisory Committee Act and to make sure it meets the
6 California Brown Open Meeting Act.

7 Now, this is tricky and it is going to, I think,
8 require some consideration on how to set up this charter.
9 Our suggestion to you would be that you take steps to remove
10 the legal cloud that these procedural requirements can
11 otherwise pose by seeking an advisory committee from the
12 Attorney General as to how to constitute this Ops group
13 consistent with the Brown Act, and we are also going to urge
14 the Department of the Interior to seek the Solicitor's
15 opinion on how to operate under the Federal Advisory
16 Committee Act, not because opinions from these sources are
17 necessarily going to be determinative, but they certainly
18 would be persuasive in the event that a challenge is ever
19 mounted to the operations of this institution based upon
20 compliance with those statutes.

21 Now, our own analysis leads us to the view that by
22 constituting the Ops group as a formal FACA committee, it
23 would then be possible to allow the actual day-by-day
24 decision making of the Ops group to be conducted by
25 subcommittees which would not have to be separately

1 constituted under FACA on an intersession basis, if you
2 will, with the decisions ratified by the full committee.

3 We suggest that that particular approach be suggested
4 to the Attorney General and to the Solicitor, and that the
5 advisory opinions specifically address this proposal.

6 The charter should also establish the limits of the
7 Ops group's authority. Specifically, to be consistent with
8 the Delta agreement, the charter should provide explicitly
9 that the Ops group and Cal-Fed are not empowered to
10 constrain the State and Federal resource agencies with
11 respect to decisions on allowable take under the Endangered
12 Species Act.

13 We turn now to the Category 3 initiatives and funding
14 for a moment. The State Board needs to appreciate that this
15 commitment to a 180 million dollars mitigation and
16 enhancement fund is an integral part of this agreement and
17 we on the environmental side would regard failure to
18 implement that pledge as a material breach of this
19 agreement, and that is of some concern.

20 The only party so far that has taken their checkbook
21 so far has been the Metropolitan Water District.

22 While we don't question the good intent of the other
23 parties to this pledge, the fact is so far there has been
24 more talk and discussion than there has been actual

1 demonstration of willingness to step forward with that
2 funding.

3 Now stakeholders are meeting regularly. They are
4 looking at sources of funding, they are looking at the
5 responsibilities of the public agencies and the water users
6 for providing it, they are looking at the scope of
7 activities, they are looking at the kind of things that
8 should be eligible for funding and belated matters. And
9 this is a continuation of the process that produced the
10 agreement and we think it ought to be given a fair chance to
11 produce results, but we don't think that the State Board
12 should just blindly assume that volunteerism is going to
13 necessarily provide the funding, and for that reason, we
14 suggest that you include in the water quality control plan a
15 set of default requirements regarding the funding and the
16 use of funding, provisions that would come into play only if
17 the coalition that is negotiating fails to present a
18 workable program.

19 The features of that default program that we suggest
20 to you -- first of all, it is going to be important to
21 apportion this responsibility for providing funding as among
22 the various public agencies and water users.

23 These pledges will remain hollow until they are
24 particularized, and if the parties themselves don't do that,

1 then we think the State Board needs to come up with an
2 assessment formula, if you will.

3 In terms of how the funding will be raised in the
4 absence of voluntary contributions, we suggest that the
5 water quality control plan, again on a default basis,
6 provide for the establishment of a water users fee program
7 not unlike the one that was devised by this Board in its D-
8 1630 order with one important exception. We, having looked
9 at it with some care, believe the Board does have the legal
10 authority necessary to assess water users and create the
11 fund.

12 The problem is we don't believe under State law that
13 you can actually be the custodian of the fund without that
14 money being lost to the general fund and then being subject
15 to appropriations by the Legislature.

16 So, we would like to work with you on a structure
17 that would avoid that problem, perhaps by allowing a non-
18 governmental entity to act as the custodian of the funds,
19 either pursuant to contract with the Board, or maybe more
20 ideally, a special purpose non-governmental, non-profit
21 entity that would be created by the stakeholders themselves,
22 and an entity that they could control and govern.

23 Also, bear in mind as we think about this very
24 important fund, that it really was the contemplation of the
25 parties, we believe, that the funding would consist of new

1 moneys; that is, money not otherwise available for
2 improvement in the Delta, rather than simply a double
3 counting of moneys that would otherwise be available.

4 There is reference in the agreement to the
5 possibility of reprioritizing existing governmental
6 programs, but that's not to say that, for instance, the
7 restoration fund, federal restoration fund should be counted
8 against this 180 million dollar pledge, except to the extent
9 that that money would not otherwise be available for Delta
10 initiatives.

11 Talking now about new money and the possibility of
12 new initiatives; another consideration, some water users
13 apparently prefer to initiate their own so-called Category 3
14 activities and have those initiatives credited against the
15 funding obligation. That can be workable, but we do have a
16 concern that unless that is supervised, initiatives only
17 tangentially related to improvements in the estuary, may end
18 up dissipating a fair amount of this fund.

19 Our suggestion there is that the water quality
20 control plan should set forth criteria governing the types
21 of mon-monetary contributions that should qualify Category 3
22 activities, final judgment as to whether or not to, if you
23 will, certify those as Category 3 activities, final judgment
24 as to whether or not to, if you will, certify those as
25 Category 3 activities, lying with the Fish and Wildlife

1 protection agencies at the Federal and State level -- Fish
2 and Wildlife Service, National Marine Fisheries Service and
3 California Department of Fish and Game.

4 One final consideration, again related to the types
5 of activities that ought to qualify as Category 3
6 activities, we believe it is artificial to assume that
7 Category 3 activities will be non-flow initiatives only. It
8 makes more sense from our standpoint to approach Category 3
9 as an opportunity to provide the most cost effective
10 improvements in habitat conditions in the estuary whether
11 they happen to be screens, purchase of Delta islands or,
12 indeed, purchase of water for enhanced flow purposes.

13 This could be important for a couple of reasons.

14 First, the agreement limits the use of water for
15 protection to currently listed species, bear in mind, and
16 yet, there are a suite of species that are highly stressed
17 and that are likely to need additional attention beyond
18 what's provided in the agreement.

19 We believe that the Category 3 funding should be
20 available for this purpose. It is certainly far better to
21 use the funding than to have to resort to listing these
22 species under the Endangered Species Act.

23 The second, as has been alluded to several times
24 today, the San Joaquin fall salmon protections in this
25 agreement are at least in the near term going to be

1 dependent upon water releases from New Melones, which there
2 is every reason to believe will not always be adequate for
3 this purpose, in fact, will often not be adequate for this
4 purpose, and it may well be necessary to come up with
5 additional San Joaquin flows during this interim period
6 before you finalize your water rights decision to attend to
7 the needs of the San Joaquin fall-run salmon.

8 So, again, having Category 3 funding available for
9 that purpose would be, it seems to us, in the interest of
10 all parties.

11 I guess in the interest of avoiding going over any of
12 the ground that the Bay Institute already plowed for you, I
13 will just stop at this point and take any questions that you
14 may have, and just refer you to the written statement for
15 some additional recommendations.

16 MR. CAFFREY: Thank you very much, Greg.

17 Are there questions for Mr. Thomas?

18 Anything from staff?

19 Thank you, sir. We have your document here and we
20 will read it with great interest. Thank you very much.

21 Margaret Johnston. Good afternoon.

22 MS. JOHNSTON: Good afternoon, Mr. Caffrey, and
23 members of the Board.

24 My name is Margaret Johnston, I am Executive Director
25 of the San Francisco Estuary Institute, which many of you

1 may know as the predecessor organization, Aquatic Habitat
2 Institute.

3 Early in 1974, we did change our name, changed our
4 Board of Directors structure and our mission statement which
5 now is to provide scientific understanding necessary to
6 manage the complex and biologically rich San Francisco
7 estuary. In fact, we have changed our role from looking
8 strictly at pollutants to looking at the overall health of
9 the San Joaquin estuarine institute, and we accepted the
10 task under the San Francisco Estuarine Program,
11 Comprehensive Conservation and Management Program, of
12 attempting to implement a comprehensive regional monitoring
13 strategy in cooperation with other groups that monitor the
14 estuary, such as the Interagency Ecological Program.

15 We do conduct extensive trace substances monitoring
16 in the estuary and we are trying to put into place a
17 wetlands monitoring program.

18 We will also be looking at the overall monitoring
19 strategy for the estuary and what is being done currently
20 under existing programs, what is not being done, and try to
21 implement those additional elements that are needed.

22 I also would like to bring out that we are requested
23 in the water quality plan to work together with the CVPIA
24 and the Interagency Program to implement a coordinated

1 approach to the monitoring needs under the water quality
2 plan.

3 Because the by-laws of the San Francisco Estuary
4 Institute precludes us from commenting or advocating water
5 quality policy regulations, my comments have only to do with
6 the monitoring program and I would also like to state that
7 we have very little concerns or worries about the compliance
8 monitoring or the operations monitoring. Our concern is
9 with the efforts to understand whether the water quality
10 plan and all associated habitat improvement measures are, in
11 fact, going to have the desired effect on improving the
12 health of the estuary.

13 We are very pleased that the need for this kind of
14 monitoring is recognized in the plan and we recognize it as
15 being absolutely essential.

16 This morning, Mr. Coulston presented to you some idea
17 from the interagency program on the monitoring program that
18 they hope to have in place. We recognize this as a very
19 good start to get a comprehensive monitoring plan in place,
20 and it is based upon, of course, adopting the current
21 monitoring program.

22 But the plan that you will have in your hands is
23 really just a start and it needs a great deal of work before
24 it really can be considered a blueprint for a long-term
25 monitoring effort.

1 In addition to needing a real definition of success
2 in order to design a monitoring program, there are other
3 issues such as replication and statistical power of your
4 measurements that have to be fully analyzed before we have
5 confidence in the results of the monitoring.

6 We strongly recommend that the current draft
7 monitoring plan and the subsequent iterations of that plan
8 will add the details when, where and what is monitored, that
9 these plans be subject to extensive external review, and
10 call upon the expertise already available in scientific
11 advisory groups that have been formed to review the work of
12 the Interagency Ecological Program and the San Francisco
13 Estuary Institute.

14 At this point, neither of those groups have been
15 asked to review the plan that's being presented.

16 We would also like to point that we need to think of
17 monitoring the estuary in a synoptic way. In addition to
18 the control flow and diversion, these other Category 3
19 activities that are proposed, such as reducing the pollutant
20 load, increasing wetland habitat availability and
21 controlling exotic species also need to be looked at at the
22 same time we are examining issues of flow and salinity.

23 Monitoring of Category 3 activities will not be
24 effective if done on a piecemeal case-by-case basis,

1 unconnected to the long-term program designed to determine
2 compliance with flow and salinity requirements.

3 Many agencies and organizations outside of the
4 current Interagency Ecological Program structure will need
5 to be involved in developing this comprehensive, synoptic
6 approach to monitoring. As an example, in trace substances
7 monitoring, we will also need to include both Regional
8 Boards 2 and 5, the Sacramento comprehensive monitoring
9 program, the U. S. Geological Survey's water quality
10 assessment of the Sacramento and San Joaquin River basins
11 will all need to be coordinated.

12 We are willing to help provide the needed
13 coordination process.

14 We also hope that the Board is very well aware of the
15 fact that few of the answers that all of us desire
16 concerning the effectiveness of the control measures now
17 being put into place will actually be available within a
18 three-year period.

19 As you are quite aware, the extreme variability in
20 natural conditions, and the complicated ways in which humans
21 impact that system, make it a very challenging job to tease
22 out cause-and-effect relationships from the information that
23 we collect.

24 This is something that can only be done by taking a
25 long term view of monitoring and also supplementing

1 monitoring with the research program that really examines
2 how the estuary functions as an ecosystem.

3 After the initial rush to get the monitoring program
4 started, thoughtful and deliberative evaluation and re-
5 evaluation of program efficacy is and will continue to be
6 required.

7 The Institute will fully cooperate with the Board and
8 with the Interagency Ecological Program, with water users
9 and public interest groups, to try to insure that the
10 monitoring program is, in fact, the best that it can be and
11 truly answers the question of whether the control measures
12 being put into place are having the desired effect.

13 We are happy to continue to work through the
14 Interagency Ecological Program in this effort, but we want
15 you to be aware that we are willing and able to play a
16 larger role in monitoring program design, in implementation
17 of monitoring elements addressing pollutant effects and
18 wetlands, and riparian habitat condition, and data
19 management, in the interpretation and reporting of data, and
20 in coordinating research, and in particular, we think it is
21 necessary that we do a much better job than we have in the
22 past of communicating the results of this kind of monitoring
23 and the effectiveness of the control measures to the general
24 public in making it understandable.

25 Thank you.

1 MR. CAFFREY: Thank you very much. Are there any
2 questions of Ms. Johnston?

3 MR. DEL PIERO: In terms of the ability of your
4 organization to participate, how many employees do you have?

5 MS. JOHNSTON: We have 12 full-time employees and
6 about as many part-time.

7 MR. DEL PIERO: Thank you.

8 MR. CAFFREY: Any other questions? Anything from
9 staff?

10 Thank you very much.

11 Christopher Foster, representing Area 1 repre-
12 sentatives of Westlands Water District.

13 Good afternoon, sir.

14 MR. FOSTER: Good afternoon, Mr. Chairman and members
15 of the Board.

16 My name is Christopher Foster. I am here to speak on
17 behalf of several court-appointed representatives of Area 1
18 and certain other farmers in Area 1.

19 Area 1 is the original and largest portion of the
20 Westlands Water District which is a portion of the San Luis
21 Unit of the Central Valley Project.

22 I have submitted written comments which cover a
23 number of concerns.

24 I would like to discuss briefly the chief concern
25 that we have with the draft plan.

1 In December of last year, the Bureau of Reclamation
2 voluntarily announced that it would operate the Central
3 Valley Project according to the restrictions set forth in
4 the draft plan.

5 Last week, the Bureau made its water allocations for
6 this coming water year and whereas most of the Central
7 Valley Project contractors are receiving 100 percent of
8 their entitlement, Area 1 is receiving only 75 percent, and
9 our chief concern is that the Bureau is employing the
10 restrictions in the draft plan to take away water rights of
11 Area 1, and we have this interim period between the adoption
12 of the draft plan and when the implementation takes place
13 with the water rights decision, and during that interim
14 period rights are being modified and abridged without the
15 appropriate process of the water right decision to change
16 the permits that the Area 1 farmers hold.

17 So I don't have a perfect solution today to offer in
18 a manner to modify or amend the draft plan to avoid that
19 problem, but I look forward to working with the staff and
20 opening a dialogue so we can address this and explore ways
21 that the draft plan can preserve the rights of the Area 1
22 farmers in this interim period.

23 Any questions?

24 MR. DEL PIERO: I guess I am not familiar enough with
25 Area 1. I didn't understand Area 1 had any rights. I

1 understand they had a contract; is that not right?

2 MR. FOSTER: They have contractual rights and they
3 have rights from 25 years of application of water for
4 beneficial use on their farms.

5 MR. DEL PIERO: From where?

6 MR. FOSTER: They have permits held by the Central
7 Valley Project, beneficiary of the permits.

8 MR. DEL PIERO: But the CVP, the Bureau actually
9 holds the permits, the farmers do not?

10 MR. FOSTER: That is correct. They are the
11 beneficiaries.

12 MR. DEL PIERO: So, what you are talking about is
13 reductions in terms of their contractual allotments; is that
14 not correct?

15 MR. FOSTER: The contractual as well as rights that
16 they are beneficiaries of under the permits. Those rights
17 are being taken away. They are not getting 100 percent of
18 the water that they have in the past.

19 MR. DEL PIERO: And you are asserting that's a
20 function of the implementation of the water quality plan or
21 are you asserting that is a function of the implementation
22 of the CVPIA?

23 MR. FOSTER: No, we are asserting that it is in part,
24 and we are not completely sure exactly what it is that's
25 causing Area 1 only to receive 75 percent of its entitlement

1 when the rest of the CVP-wide users are getting 100 percent,
2 but it is partially, we understand, as a function of the
3 Bureau's deciding to implement the operational restrictions
4 that are set forth in the draft plan prior to its adoption
5 and prior to any modification through a water right decision
6 of the permits.

7 MR. DEL PIERO: And the Bureau represented that to
8 you?

9 MR. FOSTER: The Bureau has not made a specific
10 representation, but it sort of follows from the fact that
11 the Bureau is saying they are operating the Central Valley
12 Project under the restraints and restrictions of the draft
13 plan, and people are getting -- many of the contractors are
14 getting 100 percent, and in this wet year Area 1 is getting
15 75 percent, so at least in some parts, it is our
16 understanding that it's based on the restriction that the
17 draft plan imposes that's causing the Bureau to withhold 25
18 percent of Area 1's water.

19 MR. DEL PIERO: Why do you assume that? I don't
20 understand how you reach that conclusion when the Bureau is
21 also holding back water under the Central Valley Project
22 Improvement Act.

23 MR. FOSTER: I assume that because the Bureau's
24 statement is that they are operating the Central Valley
25 Project under the restrictions of this draft plan. We

1 haven't had anything that contradicts that assumption, that
2 this at least is in some part responsible for withdrawing 25
3 percent of the water.

4 MR. DEL PIERO: That is the conclusion you have
5 reached based on that statement, and what else?

6 MR. FOSTER: And the fact there hasn't been any
7 contrary indication from the Bureau that it is not at least
8 in part based on their operating under the restrictions that
9 are contained in the draft plan.

10 MR. DEL PIERO: Have you or any of your clients
11 approached Mr. Patterson for an affirmative answer one way
12 or the other that the reason for the reduction is based on
13 that or some other activities?

14 MR. FOSTER: I don't know that for sure.

15 MR. DEL PIERO: Thank you very much.

16 MR. CAFFREY: This is a little unusual, I just
17 received this card from Mike Heaton representing Westlands.

18 Did you wish, Mr. Heaton, to respond to this
19 discussion?

20 MR. HEATON: I will just take my turn when it comes
21 up. I do want to respond to a couple of things. Perhaps I
22 can clarify a couple of things.

23 MR. CAFFREY: All right, thank you, sir. We will be
24 with you shortly then.

25 Mr. Foster, thank you very much. I don't quite know

1 how to answer your concern. It seems to me, though, that
2 some clarification from the Bureau might be in the offing
3 for you as to how they get to their 75 percent allocation
4 for your clients.

5 I don't have an answer in terms of how this proposed
6 plan may or may not affect that.

7 MR. FOSTER: I think that would be one method, but
8 the other might be some language in the draft plan that
9 insures that the use of the draft plan by the Bureau is not
10 the basis for the withdrawal of any of the rights of water
11 from Area 1.

12 MR. CAFFREY: Thank you very much. We have your
13 document and we will take a quick look at it. Thank you.

14 Lowell Landowski, representing the Bay Fishermen's
15 Coalition.

16 MR. LANDOWSKI: Good afternoon, members of the Board.

17 I am concerned about the proposed research and
18 limitation on introduced species, specifically striped bass
19 under recommendations to other agencies. I feel that it is
20 a case of pitting one species against the other and maybe
21 punishing a substantial population to benefit other
22 beneficial uses under water diversions.

23 But even though that's the case, one thing that
24 concerns me more is the lack of a detailed cost-benefit
25 analysis in this document. Under the section in the

1 environmental analysis under conclusion, it states:

2 *The management of controllable factors is*
3 *associated with the decline of aquatic*
4 *resources. However, the relative effects of*
5 *controllable and uncontrollable factors have*
6 *not been quantified. Therefore, management of*
7 *controllable factors may not significantly*
8 *improve the condition of aquatic resources in*
9 *the estuary due to the effect of uncontrolled*
10 *factors, but such efforts should be made with*
11 *this uncertainty in mind.*

12 I don't think that efforts that potentially impact
13 employment, substantial capital investment, small farms,
14 fishermen's lives should be done with this uncertainty in
15 mind.

16 Currently the Congress of the United States is
17 considering just such legislation. The cost-benefit
18 analysis would be an essential factor in any decision-making
19 process involving regulations.

20 While I am interested in preserving Delta fish
21 because I love the Delta, some people love the ocean and the
22 mountains, and I love them both, but if you ask me which I
23 love the most, it would be the Delta. That's where I spend
24 my free time.

25 But if I knew that putting some farmer out of work

1 might enhance my pleasure by some insignificant incremental
2 degree, I couldn't sleep at night.

3 I would like to know what are the costs, what are the
4 benefits of all these aspects that are being considered in
5 this plan.

6 I would urge the Board to beef up or at least provide
7 some substantive discussion regarding costs and benefits of
8 these actions proposed.

9 Another factor that should be considered is upstream
10 water storage facilities. I don't see much mention of it,
11 but since we are talking about limiting diversions in order
12 to increase flows for beneficial purposes, we should also
13 consider increasing storage to allow more flow to allow an
14 easier and more humane balancing of these interests.

15 I find it ironic that groups that might oppose
16 upstream water storage would also be diligent in their
17 advocacy of limiting diversions at the same time. It seems
18 like cutting it off on both ends.

19 So I would just urge the Board to consider a cost-
20 benefit analysis as one of the key elements of this whole
21 decision.

22 We are talking about tax dollars and we are talking
23 about the source of those tax dollars, business activities,
24 and then we are talking about impacts and benefits to
25 wildlife and recreation, which we are all for and benefit

1 in, but we need to know more about costs.

2 MR. CAFFREY: Thank you, Mr. Landowski.

3 Do you have a submittal?

4 MR. LANDOWSKI: No, I don't.

5 MR. CAFFREY: Thank you, sir.

6 Mike Heaton, responding to the discussion on
7 Westlands Water District.

8 Good afternoon, sir.

9 MR. HEATON: Good afternoon, Mr. Chairman and
10 members.

11 I am Mike Heaton, General Counsel for Westlands Water
12 District.

13 I hadn't prepared anything but there were a couple of
14 things said this afternoon that I feel somewhat obligated to
15 respond to.

16 The first comment that I wanted to respond to was
17 that of Mr. Thomas from NHI, and I was out arguing with Greg
18 in the hallway and I walked in on Mr. Foster's statement,
19 and I thought I had to respond to that one as well.

20 Greg Thomas made a statement, something to the effect
21 -- I will put a few words in his mouth, but basically what
22 he said was restoration fund money doesn't count against the
23 60 million dollars that is referenced in the Bay-Delta
24 agreement.

25 We didn't get that resolved in the hallway --

1 MR. CAFFREY: How come?

2 MR. HEATON: I don't think that's abuse of the
3 federal contractors, but I just wanted to make sure that was
4 clear.

5 MR. DEL PIERO: Is that something you can work out
6 between now and the end of the month?

7 MR. HEATON: We are going to have to sort that out.
8 I think it was clearly the view of the federal contractors
9 who were involved in the Bay-Delta negotiations that at a
10 minimum, to the extent that activities undertaken with
11 restoration fund money since CVPIA was compatible with the
12 category 3 project criteria, that there is credit and that
13 that the money will count.

14 We are not going to get it twice.

15 MR. DEL PIERO: That's the position of the
16 contractors?

17 MR. HEATON: I think it is fair to state that is the
18 position of the CVP contractors.

19 MR. DEL PIERO: Is it fair also to state that that
20 was not resolved during the agreement that was worked out
21 and proposed on December 15?

22 MR. HEATON: It probably is. The language is
23 probably somewhat ambiguous. I think it is going to be
24 those things in retrospect we will look back and say
25 different parties meant different things.

1 MR. DEL PIERO: I have been asking the question for
2 the last month and a half, and nobody can give me an answer,
3 so that's why I asked.

4 MR. HEATON: I thought we meant what we gave at the
5 office. Others may have a different view.

6 MR. DEL PIERO: The Chairman says you guys can have
7 until March 10 to work that out.

8 MR. HEATON: We will do our best.

9 When I walked in Mr. Foster was speaking. I am sorry
10 I didn't get a chance to talk to Chris ahead of time. I
11 just wanted to make it clear, at least from what I heard of
12 Mr. Foster's statement was clearly representative of the
13 views of individual landowners within Westlands and not the
14 views of the Board of Directors or Westlands Water District.

15 Westlands has been a very active participant in this
16 process and while our board hasn't taken a formal position
17 on the draft plan, we have been authorized and directed
18 staff and consultants to participate in all aspects of these
19 processes.

20 We fully supported the San Luis-Delta-Mendota Water
21 Authority. We are the largest member of the Authority.

22 I think, again, without having formal resolution by
23 the Board, the Westlands board is supportive of the draft
24 plan. We want to see it implemented and want to see the
25 process work.

1 I think I might be able to just add some factual
2 clarification to the allocation situation on south of the
3 Delta. Mr. Foster is correct that the allocations to South
4 Delta federal contractors this year of 75 percent of the
5 contractual entitlement. That is not something unique to
6 Area 1 in Westlands. It is a situation with respect to all
7 water service contractors south of the Delta. That includes
8 the Delta-Mendota Canal division contractors, the other San
9 Luis Unit contractors which are Westlands, San Luis,
10 Panoche and Broadview Water Districts, and San Benito
11 County Water District in the San Felipe Unit. They have all
12 received 75 percent.

13 We are no happier than Mr. Foster's clients about the
14 fact that everybody else is getting 100 percent and we are
15 only getting 75 percent, but we believe the fact we are
16 getting 75 percent in some measure is a reflection of this
17 program and this draft plan, and the fact the projects are
18 operating in this plan.

19 We believe that if we were, say, operating, for
20 example, in 1995 under criteria constraints similar to what
21 we had in 1993 when we had 50 percent in a wet year, or 1994
22 which was a dry year in which we had 35 percent, we are
23 actually a lot better off now under the draft plan than we
24 would be without it.

25 There would probably be to the tune or 15 or 20

1 percent incremental differences in our contract supplies.

2 Why are we only getting 75 percent? There's a number
3 of reasons. The Bureau and the State projects have agreed
4 to voluntarily comply with the Bay-Delta agreement, or the
5 draft plan. The Bureau has other constraints, though, as
6 well. Separate and apart from Delta pumping constraints,
7 the Bureau now has a contractual obligation south of the
8 Delta that exceeds the capacity of their Tracy pumping plant
9 of the capacity of the upper Delta-Mendota Canal somewhere
10 in the neighborhood of 2 or 3 hundred thousand acre-feet,
11 and this is a function of the San Felipe Unit, San Benito
12 and Santa Clara being on line, and the functions of the
13 obligations now to the refuges south of the Delta.

14 The level 2 obligation to the refuges south of the
15 Delta itself is 210, 212 thousand acre-feet. This is an
16 obligation that did not exist prior to October 31, 1992, and
17 that took up a big chunk of the remaining capacity at Tracy.

18 The fact is our analysis shows that even if you had
19 no constraints in the Delta, none whatsoever, we can't get
20 to 100 percent. We always run about ten percent short
21 because you can't move enough water through Tracy. That's
22 why the consolidated point of diversion is so important.

23 MR. DEL PIERO: I don't mean to start a war, but it
24 is my understanding that there is at least one agency in
25 that area that has received 75 percent allocation and is

1 having real difficulty getting this water received as part
2 of their allocation, particularly the M&I allocation. They
3 can't find anybody to take it.

4 MR. HEATON: Give me the name and we will take it.

5 No, I am not familiar with the situation you are
6 talking about. I have no information on that.

7 That's all I really have to say. I wanted to clarify
8 those two points.

9 I would be happy to answer other questions.

10 MR. CAFFREY: Are there any other questions?
11 Anything from staff?

12 MR. FOSTER: Mr. Chairman, I just want to make
13 sure that it is confirmed that my statements were not meant to
14 be on behalf of Westlands, but particularly Area 1.

15 MR. CAFFREY: Thank you for clarifying that.

16 All right, ladies and gentlemen, let me state then
17 that that completes the cards for today, and just by way of
18 letting you know what is going to happen now, and I will
19 look to Mr. Pettit to correct me if I err, but as to when
20 you will hear from us next goes to how long it takes us to
21 respond to your various comments and assimilate them after
22 March 10, so to speak, because March 10 is the deadline, so
23 sometime after March 10 as quickly as we can, we will again
24 come forward with the draft plan, possibly revised, possibly
25 not, depending on how all the comments meld.

1 And we will then move toward a meeting with that
2 draft to adopt it.

3 And so, we will be letting you know what the timing
4 of all this is through the public notification process as
5 quickly as we can.

6 Is there anything else, Mr. Pettit?

7 MR. PETTIT: Just a clarification, Mr. Chairman. As
8 you know, I was out for a few minutes after the lunch
9 recess, and I have a submittal here from the Woodbridge
10 Irrigation District and I want to make sure they either
11 didn't intend to speak or you covered them while I was gone.

12 MR. CAFFREY: I did see that and we did not. I saw
13 Mr. Gallery here earlier.

14 Is anybody here wishing to speak on behalf Woodbridge
15 Irrigation District? It is not required. We do have the
16 submittal.

17 MR. HOWARD: Mr. Gallery left me a note to that
18 effect.

19 MR. CAFFREY: Anything else?

20 Thank you all very much for attending our hearing.

21 (The hearing was adjourned.)

22

23

24

25

1 REPORTER'S CERTIFICATE

2 ____e---oOo---

3 This is to certify that I, Alice Book, a Certified
4 Shorthand Reporter, was present during the Public Hearing of the
5 STATE WATER RESOURCES CONTROL BOARD, STATE OF CALIFORNIA,
6 held in Sacramento, California, on February 23, 1995;

7 That as such I recorded in stenographic writing the
8 proceedings held in the matter of Consideration of a Water
9 Quality Control Plan for the San Francisco Bay/Sacramento-
10 San Joaquin Delta Estuary;

11 That I thereafter caused my said stenographic writing
12 to be transcribed into longhand typewriting and that the
13 preceding pages 1 through 165, constitute said transcrip-
14 tion.

15 That the same are true and correct transcriptions of my
16 said stenographic writing for the date and subject matter
17 hereinabove described.

Dated: March 10, 1995.



Alice Book, CSR No. 43